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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, AND J. M. GRIMES, TREASURER OF STATE, OF THE STATE OF IOWA, ALLAN T. DAYKIN, COUNTY AUDITOR OF DUBUQUE COUNTY, IOWA, AND LEO J. MEUSER, COUNTY TREASURER OF DUBUQUE COUNTY, IOWA

STATEMENT AS TO JURISDICTION

Pursuant to the provisions of Rule 12 of the Supreme Court of the United States, Laura Dickinson, Appellant herein, files this statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment entered in this cause in the Supreme Court of the State of Iowa on March 11, 1949.

A

Statutory Provisions Sustaining Jurisdiction

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment herein complained of is confirmed by Section 1257 Subsection 2 of Title 28 of United States Code.

B

Statute of the State of Iowa, the Validity of Which Is Involved

The statute of the State of Iowa, the validity of which is involved herein is Chapter 426 of the 1946 Code of Iowa as amended, pages 1228 and 1229, the pertinent provisions of which are as follows:

"426.1 *Agricultural land credit fund.* There is hereby created as a permanent fund in the office of the Treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1946, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of five million dollars. Any balance in said fund on June 30 shall revert to the general fund.

426.2 *Definition.* "Agricultural lands" as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes. Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than

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ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

426.3 *Where credit given.* The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the millage for the general school fund exceeds fifteen mills; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund fifteen mills, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which a homestead credit, as provided by Chapter 425, has been allowed for the year in which the agricultural credit is claimed.

426.6 *Computation by auditor.* On or before August 1 the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit hereunder together with the taxable value, and immediately upon receiving the certification of the budget from each school district shall determine the tax rate for the general fund of the district in the manner provided in Section 444.3, if the tax rate is in excess of fifteen mills he shall multiply the millage which is in excess of fifteen mills by the total taxable value of the agricultural lands entitled to credit hereunder in the district and on or before November 10

certify the amount thereof to the state comptroller. In the event the county auditor denies a credit upon any such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. • • •.

426.7 *Warrants drawn by comptroller.* After receiving from the several county auditors of the state the certifications provided for in Section 426.6, and on or before December 10, the state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the tenth of November, he shall prorate the fund to the several county treasurers and notify the several county auditors of the prorata percentage at the time of mailing the warrants to them.

426.8 *Apportionment by auditor.* Upon receiving the warrant from the state comptroller the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon the tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit, the amount of said credit, and shall deliver the comptroller's warrant to the county treasurer with the tax lists. The county treasurer shall credit each school district with the total amount of the tax credits credited on lands in the district and shall show on each tax receipt the amount of tax credit for each tract of agricultural lands.

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426.9 *Pro rata disbursement.* If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis."

C

Date of Judgment

The final judgment sought to be reviewed was entered by the Supreme Court of the State of Iowa, the highest court of the State of Iowa in which decision could be had, on March 11, 1949. Application for this appeal was presented and allowed June 2, 1949.

D

Nature of Case and Rulings Below

The statute in question sets aside five million dollars for each fiscal year to be used to pay all of the general school fund taxes in excess of fifteen mills on agricultural land as defined by the statute. The term "agricultural land" is defined in the statute to mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres and tracts of less than ten acres belonging to and a part of other lands of more than ten acres, lying within any school corporation in the State of Iowa and in good faith used for agricultural or horticultural purposes.

Under the statute in question owners of "agricultural land" as defined by the statute, are required to pay only a general school fund tax of fifteen mills on said property regardless of the amount of said tax actually levied in the school district in which the real estate is located. Owners of real estate not meeting the requirements of the statute

regardless of its type and the use to which it is put, are required to pay the general school fund tax levied thereon to the full extent of the millage rate.

Appellant, the owner of agricultural land of less than ten acres in size in Epworth School District, Dubuque County, Iowa, brought action in the District Court of Iowa in and for Dubuque County, challenging the constitutionality of said statute, Chapter 426 of the 1946 Code of Iowa, and asking the Court to enter a declaratory judgment decreeing said statute unconstitutional and void on the following grounds:

1. That said statute violates the provisions of Section 6, Article 1, and Section 30, Article 3 of the Constitution of the State of Iowa in that the law is of a general nature but not of uniform operation, throughout the State of Iowa. (Record on appeal to the Supreme Court of the State of Iowa, page 6.)

2. That the statute is in violation of Section 6, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws. (Record on appeal to the Supreme Court of the State of Iowa, page 8.)

3. That plaintiff-appellant is being deprived of money and property without due process of law in violation of Section 9, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Record on appeal to the Supreme Court of the State of Iowa, page 10.)

Defendants-appellees, asserted the statute was constitutional.

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The district court declared the statute constitutional on January 6, 1947. A copy of the court's decision is appended hereto marked Appendix "A". Thereafter appeal was taken to the Supreme Court of the State of Iowa which court on February 10, 1948 entered a judgment and decree reversing the district court and sustaining the contentions of appellant. A copy of said judgment and decree is appended hereto marked Appendix "B". (The decision is reported in 31 N. W. (2d) 110.) Thereafter on December 14, 1948, the Supreme Court of the State of Iowa withdrew its previous judgment and decree and entered in its stead a judgment and decree holding that said statute was constitutional and that it was not violative of the Iowa Constitution or the Fourteenth Amendment to the Constitution of the United States. A copy of said judgment and decree is appended hereto marked Appendix "C". (The decision is reported in 35 N. W. (2d) 66.) Thereafter on March 11, 1949, a rehearing was denied appellant and the judgment and decree became final on that date. A copy of the order denying the rehearing is appended hereto marked Appendix "D".

E

Manner in Which Federal Questions Were Raised and Rulings of the Court Which Bring the Case Within the Jurisdictional Provisions Relied On.

The appellant asked the district court to enter a declaratory judgment decreeing said statute unconstitutional and void on the following grounds:

1. That said statute violates the provisions of Section 6, Article 1, and Section 30, Article 3 of the Constitution of the State of Iowa in that the law is of a general nature but not of uniform operation, throughout the State of Iowa. (Rec-

ord on appeal to the Supreme Court of the State of Iowa, page 6.)

2. That the statute is in violation of Section 6, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws. (Record on appeal to the Supreme Court of the State of Iowa, page 8.)

3. That plaintiff-appellant is being deprived of money and property without due process of law in violation of Section 9, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Record on appeal to the Supreme Court of the State of Iowa, page 10.)

The district court in its opinion stated that among the issues presented by the plaintiff-appellant, was the following allegation:

> "That said Act is in violation of Section 6, Article I. of the Constitution of Iowa and Section I. of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon which the same terms are not equally granted to all citizens of the State, and denies to certain persons the equal protection of the law. That plaintiff is being deprived of money and property without due process of law and in violation of Section 9, Article I. of the State Constitution and Section I. of the Fourteenth Amendment of the United States Constitution." (Appendix "A", page 16.)

In passing upon the federal questions raised the district court stated:

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"In so far as it is a tax exemption statute, and a law of general nature, it must have a uniform operation and must not grant to any citizen, or class of citizens, a privilege or immunity which upon the same terms shall not equally belong to all citizens, as required by Section 6 of Article 1. of the Iowa Constitution.

"Furthermore, it must not deny to any person within the jurisdiction of the State the equal protection of the laws, as guaranteed by Section I. of the Fourteenth Amendment to the Constitution of the United States" (Appendix "A", pages 21-22.)

The district court in rendering its judgment and decree held:

"This Court holds that the Act in question is not vulnerable to any of the constitutional objects raised against it in this proceeding" (Appendix "A", page 25).

The Supreme Court of the State of Iowa in the first majority opinion rendered in this case took issue with the district court on the federal questions having been presented, recognizing said federal questions in its summarization of appellant's attack upon the constitutionality of the statute in the following language:

"• • • that the Act is in violation of Sec. 6, Art. I of the Constitution of Iowa, and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws; (3) that plaintiff is being deprived of money and property without due process of law and in violation of Sec. 9, Art. I of the State Constitution and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States" (Appendix "B", page 27).

The Supreme Court of the State of Iowa in its first majority opinion found said statute to be in violation of Arti-

cle 1, Section 6 and Article 3, Section 30 of the Constitution of the State of Iowa in that the law was of a general nature but was of non-uniform operation throughout the state thereby granting to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state. The following language summarizes the reasoning and holding of the court:

> "Because we hold the statute violative of Art. I, sec. 6 and Art. III, sec. 30 of the Iowa Constitution, we need not go into the question of whether the statute also violates other provisions of the state or federal constitutions. • • •
>
> The argument of appellees is that this is an appropriation act and if it be considered as 'for local or private purposes' then it is still constitutional because the record shows it was passed by a two-thirds vote of the members elected to each branch of the General Assembly. Little need be said in answer to the argument. The above provision is not grant of authority to the legislature to enact any kind of an appropriation act by a two-thirds majority. • • • This is a law for the collection of taxes for state purposes. It violates section 30, Art. III, and it is not rendered constitutional because of the appropriation feature of the act." (Appendix "B", pages 43-4.)
>
> "We have held the exemption here granted is not for a public purpose. It necessarily follows that the legislative designation of the fund that was to pay the exemption, or the appropriation from state funds of $500,000.00 to pay the tax credits allowed by the act, would not be for a public purpose." (Appendix "B", page 45.)

The Supreme Court of the State of Iowa in its second majority opinion rendered with its judgment and decree withdrawing its first opinion and affirming the lower court considered and passed upon the federal questions involved herein.

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The court's summarization of appellant's attack upon the constitutionality of said statute is as follows:

> "Plaintiff, who owns a 4-acre tract used solely for agricultural purposes in Epworth School District, Dubuque County, challenges the Agricultural Land Tax Credit Act (Ch. 426, Code, 1946) on the grounds, insofar as here urged, it violates: (1) Article III, section 30, and Article I, section 6, Iowa constitution, and section 1 of the Fourteenth Amendment to the federal constitution in that the law lacks uniformity and provides arbitrary and discriminatory classifications, and (2) Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. The trial court held the law was not unconstitutional upon the grounds urged and plaintiff has appealed." (Appendix "C", page 78.)

That the Supreme Court of the State of Iowa considered in its second majority opinion the federal questions raised by appellant, is shown by the following excerpts from the opinion:

> "Article III, section 30, and Article I, Section 6, of our state constitution, invoked by plaintiff, require that the law in question have a uniform operation throughout the state. The effect of section 1, Fourteenth Amendment to the federal constitution as applied to this case is substantially the same as these uniformity provisions of our own constitution. In general, if a law does not offend against one constitution it is inoffensive to the other." * * * Both in her petition and in argument here plaintiff's complaint is that the statute conflicts with the above constitutional provisions in that the classifications in the law are unreasonable and arbitrary. It is contended there is no basis for separately classifying (1) agricultural lands (2) of ten acres or more (3) in school districts where the millage exceeds 15 mills." (Appendix "C", page 82.)

The Supreme Court of the State of Iowa in affirming the lower court and in holding the statute constitutional stated as follows:

> "We conclude plaintiff has not demonstrated beyond a reasonable doubt the act in question violates, in the respects claimed, the constitutional provisions she has invoked. The decree is therefore affirmed." (Appendix "C", page 102.)

Therefore, the appellant, Laura Dickinson, respectfully submits that the federal questions herein involved were drawn in issue and considered by the district court and the Supreme Court of the State of Iowa throughout the entire course of the litigation involving the statute in question and that the Supreme Court of the State of Iowa has sustained the validity of the statute.

F

Cases Sustaining the Jurisdiction

The following cases sustain the jurisdiction of the Supreme Court of the United States:

1. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute is repugnant to the Fourteenth Amendment to the Constitution of the United States.

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102;

Connecticut General Life Ins. Co. v. *Johnson*, 303 U. S. 77, 58 S. Ct. 436, 82 L. Ed. 673;

Fiske v. *State of Kansas*, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108;

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Lawrence v. *State Tax Commission of Mississippi*, 286 U. S. 276, 52 S. Ct. 556, 76 L. Ed. 1102;

Norfolk & W. R. Co. v. *Conley*, 236 U. S. 605, 35 S. Ct. 437, 59 L. Ed. 745.

Therefore, the appellant, Laura Dickinson, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 1257 Subsection 2, Title 28 of the United States Code.

G

The Federal Questions Involved Are Substantial

The question to be resolved on this appeal is whether Chapter 426 of the 1946 Code of Iowa is or is not invalid and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The specific features of the statute, the constitutionality of which appellant attacks are (1) the arbitrary legislative classification, (2) the private purpose of the statute and the appropriation provided therein, and (3) the amount, manner and method by which the exemption or tax credit and the allocation of said funds to the school district is determined under the statute.

The substantiality of the federal questions herein involved cannot be doubted. The statute in question provides for the appropriation of five million dollars annually to pay for the tax credits provided in said statute. The money so appropriated is raised by general statewide taxation and every taxpayer of Iowa as well as the appellant herein has a vital interest in this matter.

Conclusion

It is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 1257 Subsection 2 of Title 28 of the United States Code.

Respectfully submitted,

MARTIN M. COONEY,
705 Roshek Building,
Dubuque, Iowa,
Counsel for Appellant.

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APPENDIX "A"

IN THE DISTRICT COURT OF IOWA, IN AND FOR DUBUQUE COUNTY

January Term, A.D. 1947

LAURA DICKINSON, *Plaintiff,*

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, J. M. GRIMES, TREASURER OF STATE, OF THE STATE OF IOWA, ALLAN T. DAYKIN, COUNTY AUDITOR, DUBUQUE COUNTY, STATE OF IOWA, LEO J. MEUSER, COUNTY TREASURER, DUBUQUE COUNTY STATE OF IOWA, *Defendants.*

No. 31113 Equity

DECLARATORY JUDGMENT

Now, on this 6th day of January, A.D. 1947, being one of the regular days of the January A.D. 1947 Term of the above entitled Court, the above named cause having been heretofore tried to the Court, at which trial the plaintiff was represented by Clewell & Cooney, Attorneys at Law, Dubuque, Iowa, and the defendants were represented by John M. Rankin, Attorney General of the State of Iowa; R. G. Yoder, First Assistant Attorney General for the State of Iowa; Oscar Straus, Assistant Attorney General for the State of Iowa; and Earl F. Wisdom, Attorney at Law, Des Moines, Iowa; also, E. G. Kean, County Attorney for Dubuque County, Iowa, and F. H. Becker, Assistant County Attorney for Dubuque County, State of Iowa.

The matter having been tried to the Court, evidence introduced, arguments of counsel heard, and the matter having been fully and finally submitted to the Court, and this Court, being fully advised in the premises, finds:

I—Issues

Plaintiff, Laura Dickinson, a resident owner of real estate in Dubuque County, Iowa, filed a petition and recast an

amended petition in Equity, challenging the constitutionality of the Act of the 51st General Assembly of Iowa—known as an Act for the Creation of the Agricultural Land Credit Fund, and known as Chapter 192 of the Acts of the 51st General Assembly, and asking that the Court enter a declaratory judgment declaring said Chapter unconstitutional and void on the following grounds:

I. That said Act violates the provisions of Section 30 of Article 3 of the Constitution of the State of Iowa, in that the same is a law of a general nature, but not of uniform operation, throughout the State of Iowa.

II. That said Act is in violation of the provisions of Section 6 of Article I of the Constitution of the State of Iowa, in that the same is a law of a general nature, but does not have a uniform operation throughout the State of Iowa; that said Act is unreasonable and lacking in uniformity in that it grants credit upon taxes upon certain agricultural lands located in School Districts in which the millage for the General School Fund exceeds 15 mills, while denying the same, or equal credit, upon taxes on certain agricultural land in School Districts where the millage for the General School Fund does not exceed 15 mills, where there is no difference between the character of the agricultural land, or the use to which it is put; that the Act grants credits upon taxes levied on certain lands in School Districts only when the land owned by the taxpayer exceeds 10 acres, and not laid off into lots of less than 10 acres, or divided by streets and alleys into parcels of less than 10 acres, and denies such credits on taxes levied on land in the same School District, where the land is less than 10 acres, or divided into parcels of less than 10 acres, regardless of whether it is used for agricultural purposes; that the Act grants credit on taxes levied on certain land in School Districts where no homestead tax credit is available to a taxpayer, but denies a credit on taxes of certain taxpayers within the School Districts where such taxpayers are entitled to receive Homestead Credit; that the Act grants credits on taxes paid by certain taxpayers owning agricultural land, as defined by the Act in excess of 10 acres, and not laid off in lots of less than 10 acres, or divided into

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streets and alleys into parcels of less than 10 acres located in School Districts where the millage for the General School Fund exceed 15 mills, but denies to all other taxpayers the same or similar credits where the millage for the General Fund does not exceed 15 mills, and subjects all taxable property within the State to taxation for the purpose of providing the credits granted under said Act; that the distinctions made under the Act, and the persons benefited thereby, amounts to an arbitrary and unreasonable classification, and grants credits upon taxes paid by a group of taxpayers, while denying such credits on taxes to other taxpayers similarly situated.

III. That said Act is in violation of Section 6, Article I of the Constitution of Iowa and Section I of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon which the same terms are not equally granted to all citizens of the State, and denies to certain persons the equal protection of the law. That plaintiff is being deprived of money and property without due process of law and in violation of Section 9, Article I of the State Constitution and Section I of the Fourteenth Amendment of the United States Constitution.

IV. That said Act violates the provisions of Section 31, Article 3, of the State Constitution in that the sole beneficiaries of the public funds appropriated by the Act are the owners of agricultural land of 10 acres or more that are not laid off into lots of less than 10 acres, or divided by streets and alleys into parcels of less than 10 acres, and property upon which a homestead credit has not been allowed and located in School Districts where the General School Fund levy exceeds 15 mills, thereby appropriating the funds of the State to the private purpose of paying a part of the taxes of certain property owners.

The defendants, by appropriate pleading, put in issue all the material allegations in plaintiff's petition, and allege as an affirmative defense:

(a) That by virtue of the provisions of the Act that the General Fund is fully reimbursed from the income, corporation and sales tax fund for all appropriations made

from the General Fund to the said Agricultural Land Credit fund.

(b) Allege that the facts stated in sub-sections 1, 2, 3 and 4 of paragraph 10 of plaintiff's petition each constitute and provide a proper and reasonable basis of classification.

(c) Allege that all classifications contemplated and provided for by said Act are proper, reasonable and just, and not violative of any of the constitutional provisions to which reference is made in plaintiff's petition.

(d) Deny that plaintiff has such an interest in the funds to be used in contemplation of said Act as to give her the legal right to maintain this cause of action, or, the relief demanded.

(e) Allege that the said Chapter 192 of the Acts of the 51st General Assembly, and known as House File 127, was enacted by the 51st General Assembly by a two-thirds vote of the members elected to each branch of the General Assembly for the 51st session thereof.

Replying to the affirmative defense of the defendants, plaintiff makes specific denial as to part, and as to the remainder alleges that the same does not state a defense to plaintiff's allegations for the reason that the General Fund of the State is not reimbursed from the Income, Corporation and Sales Tax Fund by any funds that are earmarked to take the place of the funds appropriated from the General Fund for the Agricultural Land Credit Fund, and further, that Section 10 of Chapter 192 purports to make such said transfer of funds collected under the provisions of Chapter 393.3, Code of 1939, when in fact there is no Chapter 393.3 in the 1939 Code of Iowa, or Amendments thereto.

II.—Analysis of the Statute

Before undertaking to pass upon the constitutionality of any statute, it is essential that the Court should first analyze the statute under attack in order to determine what it does; why it does it; the manner of doing it, and the effect of doing it.

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The Agricultural Land Tax Credit Act, enacted by the 51st General Assembly of the State of Iowa in 1945, and approved on April 10, 1945, became effective by operation of Section 53 of the 1939 Code of Iowa (now Section 3.7 of the 1946 Code of Iowa) on July 4, 1945, and consists of ten separate sections.

The Act creates a permanent State Fund known as the Agricultural Land Credit Fund. In order to establish and maintain this fund for each year, beginning July 1, 1946, the Act appropriates from the General Fund of the State the sum of $500,000.00 each year from funds in said General Fund not otherwise appropriated. In addition, said Act transfers to said General Fund for each year of the two years extending from July 1, 1945, to June 30, 1947 the sum of $500,000.00 from another State fund known as the Income, Corporation and Sales Tax Fund, which latter fund was created by what is commonly known as the Three-point Tax Law. The Act does not expressly state for what purpose this transfer is made, but by necessary implication it may be assumed that it is for the purpose of meeting and defraying the annual appropriation of $500,000.00, made by the Act, for the biennium designated therein. Thus it will be seen that the appropriation made by the Act is for each year in the future, while the transfer is only for the two years ending June 30, 1947.

Having thus created and provided for the establishment and maintenance of said Agricultural Land Credit Fund, the Act then provides that said fund is to be used for the purpose of giving a credit against the tax on each tract of agricultural lands within each School District in which the millage for the General School Fund exceeds 15 mills, the amount of such credit on each tract of such land being the difference between the tax levied for the General School Fund and the amount of tax on such tract computed at 15 mills.

For the purpose of the Act, agricultural lands are defined as all tracts of land of 10 acres or more lying within any school corporation in Iowa, which tracts are in good faith used for agricultural or horticultural purposes, and which tracts are not laid off into lots of less than 10 acres, or, which are not divided by streets and alleys into parcels of

less than 10 acres. Thus it is apparent that even if a tract exceeds 10 acres, it is not eligible for the credit if it is laid off into lots of 10 acres, and if streets and alleys cut it up into parcels of less than 10 acres. A further restriction upon said credit is that the credit cannot be made to a taxpayer on any portion of his property for any year in which a homestead credit is allowed to him for the year in which the agricultural credit is claimed. In order to obtain the credit, the taxpayer must each year deliver to the Assessor a verified statement and designation of his agricultural lands, or he may, each year and prior to June 1st, file such a statement and designation with the County Auditor, with supporting affidavits of two freeholders. If the credit is allowed, the State Comptroller draws warrants in said Land Credit Fund payable to the County Treasurer in the amounts certified by the County Auditors, and mail same to said County Auditors, and when the County Auditor receives the warrant he determines the amount of the warrant to be credited to each tract of agricultural land, and enters on the tax list as a credit against the tax levied on each such tract of agricultural land on which a credit has been allowed the amount of such credit and delivers the Comptroller's warrant to the County Treasurer with the tax list. Thereupon, the County Treasurer credits each School District with the total amount of the tax credits credited on lands in the District, and shows on each tax receipt the amount of the tax credit for each tract of agricultural land. If the appropriation made by the Act is insufficient to pay the credits in full, such credits are to be paid on a pro rata basis.

From the foregoing analysis, it clearly appears that this Act levies no tax, but that in essence and in fact it is purely an appropriation act appropriating public funds raised by taxation through the Income, Corporation and Sales Tax Act since it appropriates money from the General Fund of the State for the creation, establishment and maintenance of the Agricultural Land Credit Fund, and then transferred to said General Fund in like amount of money from the Income, Corporation and Sales Tax Fund, the net effect being, from a practical standpoint, the same as though the appro-

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priation had been made directly from the Three-Point Tax Fund in the first instance, without a transfer from one fund to the other, in so far as the two-year period during which the transfer accrues is concerned. It is to be noted, however, that the appropriation is made for each and every year in the future, while the reimbursing transfer is made for only the biennium designated therein.

The credit provided by this Act is a credit against the agricultural lands as defined by the Act, and is in all of its essential features and characteristics a tax exemption act. It is not a tax credit to the owner, but to the agricultural lands, although this results in benefit to the owner, and in this respect is analogous to the Iowa Homestead Credit Act as interpreted by the Iowa Supreme Court in Ahrweiler *vs.* Board, 226 Iowa 229.

In so far as the Act extends a credit to agricultural lands, as distinguished from lands not so defined, it directly benefits such agricultural lands, and thereby indirectly benefits the owners of non-agricultural land as defined. Farming is the basic industry of the State of Iowa, and it is an industry upon which the general welfare and prosperity of the inhabitants of the State depends.

Section 30 of Article 3 of the Iowa Constitution prohibits the General Assembly from passing a local or special law for the assessment and collection of taxes for State, County or Road purposes, and provides that in all such cases, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

The Act under consideration is not a law for the assessment and collection of taxes, as heretofore pointed out herein, but in one of its aspects it is a tax exemption statute, and as such it is subject to the constitutional limitation that it must not be a local or special law, but must be a general law and of uniform operation throughout the State. In so far as it is a tax exemption statute, and a law of general nature, it must have a uniform operation and must not grant to any citizen, or class of citizens, a privilege or immunity which upon the same terms shall not equally belong to all

citizens, as required by Section 6 of Article I of the Iowa Constitution.

Furthermore, it must not deny to any person within the jurisdiction of the State the equal protection of the laws, as guaranteed by Section I of the Fourteenth Amendment to the Constitution of the United States.

Section 31 of Article 3 of the Iowa Constitution forbids the appropriation of public money for local or private purposes, unless such appropriation be allowed by two-thirds of the members elected to each branch of the General Assembly, and the Agricultural Land Credit Act, in its aspect as an appropriation Act, is subject to this constitutional limitation.

III—General Principles, Findings and Conclusions of Law

In passing upon the constitutionality of this Act of the Legislature there are certain well-established fundamental principles to be borne in mind.

Any citizen taxpayer has sufficient interest in preventing the illegal expenditure of moneys raised by taxation to question the constitutionality of statutes requiring expenditure of public money.

When the constitutionality of a legislative act is challenged by a litigant the burden rests upon him to plead and prove facts showing why the legislation should thus be overthrown and rejected, and be entitled to the judgment he seeks.

It is the mandatory duty of the General Assembly of the State of Iowa to promote and encourage by all suitable means both Schools and Agriculture.

The law-making power is vested in the State Legislature, and the Courts cannot interfere with the exercise of that power and authority, unless the Legislature has usurped powers prohibited by the State or Federal Constitution; and, a statute will not be held unconstitutional unless its contravention of constitutional guaranties is so clear, plain and palpable as to leave no reasonable doubt on the subject, and every reasonable presumption is indulged in favor of the validity of a legislative act because the Legislature, which was first required to pass upon the question, acting

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with integrity and a just desire to keep within the restrictions laid down by the Constitution upon their action, have adjudged that it is so.

It is inherent in the exercise of the power to tax that a statute be free to select the subjects of taxation and to grant exemptions.

Inequalities, which result from singling out one or more particular classes for exemption, infringe no constitutional limitations. Like consideration governs exemptions of a tax imposed upon the members of a class.

A Legislature is not bound to tax every member of a class, or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis, if there is any conceivable state of facts which would support it. The Legislature may withhold the burden of a tax, in whole or part, in order to foster what it conceives to be a public benefit.

Classification, if reasonable for purposes of taxation, is not precluded by the Fourteenth Amendment to the Federal Constitution, insofar as it relates to equal protection of the law; in fact, the power to classify is undisputed so far as the equal protection clause of the Federal Amendment is concerned, and the only question is whether the classification is a proper one. All that equal protection of the law requires is that all in the same class shall be treated alike.

In its aspect as a tax exemption statute, the validity of this Act must hinge upon the classification of certain lands as subject to the exemption, and must depend upon whether or not such classification is reasonable under all the circumstances.

The only limitation upon the legislative power to exempt property from taxation is that there must underly the exercise of the power, some principle of public policy that can support a presumption that the public interest will be enhanced by the exemption granted, and the classification of the property exempted must be based on some reasonable ground, and some real difference, which bears a just and proper relation to the subject sought to be accomplished.

In order to be valid, legislation must treat alike under the same conditions all who are brought within its influence;

and, in its classification it must bring within its influence all who are under the same condtions, but, uniformity of operation does not depend necessarily upon the number of citizens affected, for if the law operates upon every person within the relation or circumstances provided for, the requirement of uniformity is met. Practical uniformity and equality is constitutional uniformity and equality. The classification, however, must be based upon apparent natural reason; some reason suggested by necessity; by such difference in the situation and circumstances of the subjects, placed in different classes, as suggests the necessity, or the propriety, of different legislation with respect to them, and if any state of facts reasonably can be conceived to sustain a classification adopted by a statute, the existence of those facts, when the law was enacted, must be assumed.

The presumption in favor of the constitutionality of statute is especially strong when the statute was enacted to promote a public purpose, such, for example, as statutes relating to taxation. It is well-settled that in the field of taxation, even more so than in other fields, the Legislature possesses the greatest freedom in classification.

The power of exemption implies the power of discrimination, and in the field of taxation classification is within the competency of the Legislature.

Section 6210, Code of 1939 (Section 404.4 of 1946 Code) of Iowa classifies lands within the limits of any city or town, not laid off into lots of 10 acres or less, or not subsequently divided into parcels of 10 acres or less by streets and alleys, and which is in good faith occupied and used for agriculture, or horticultural purposes, and limits taxation of such lands for city and town road purposes to not to exceed one and one-fourth mills. This classification was held reasonable by the Iowa Supreme Court at an early date, and is practically identical to the classification made by the Agricultural Land Credit Act, except that the early act classifies land in cities and towns, while the latter act classifies land in School Districts.

The Act under consideration is not a revenue raising act, since it neither imposes nor provides for the imposition of taxes. It relates to the disposition of taxes, or special

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funds, already levied and collected under other statutes, and provides for the transfer of portions thereof from the Special Fund to and for the use of the General Fund. In legislative parlance, such an act is denominated an Appropriation Act. The equal protection and equality and uniformity provisions of the State and Federal Constitutions do not apply to the expenditure of taxes, but only to the assessment and collection thereof. The only constitutional limitation upon the expenditures of public money is that it be appropriated for a public purpose, as distinguished from a local or private purpose, and the Iowa Constitution expressly provides that public money may be appropriated for local or private purposes, if such appropriation be allowed by two-thirds of the Members elected to each branch of the General Assembly. By stipulation herein, it is shown that the present Act was passed by the 51st General Assembly by a two-thirds vote of the members elected to each branch of said General Assembly.

This Court is of the opinion that the Act in question appropriates public money for the sole purpose of aiding Agriculture, and is, therefore, an appropriation for public purpose.

If it could be said that the appropriation made by the Act is for a local or private purpose, then, since the Act was passed by a two-thirds vote of the Members elected to each branch of the General Assembly, it was passed as required by Section 31, Article 3, of the Iowa Constitution.

This Court holds that the Act in question is not vulnerable to any of the constitutional objects raised against it in this proceeding.

Judgment is hereby rendered in favor of the defendants, and plaintiff's petition is dismissed at plaintiff's costs.

Exceptions are saved to plaintiff.

JOHN G. CHALMERS,
Judge District Court, 19th Judicial District of Iowa.

APPENDIX "B"

IN THE SUPREME COURT OF IOWA

Filed Feb. 10, 1948

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47072

LAURA DICKINSON, *Appellant*,

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. GRIMES, Treasurer of State of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court—John G. Chalmers, Judge

Declaratory judgment action testing the constitutionality of the Agricultural Land Tax Credit law (Chap. 192, Laws of the 51st G.A.; Chap. 426, Code, 1946) under various provisions of the Iowa and Federal Constitutions. The trial court held the act constitutional.—Reversed.

Clewell & Cooney, of Dubuque, for appellant.

Robert L. Larson, Attorney General of Iowa, Jas. A. Lucas, First Assistant Attorney General of Iowa, Oscar Strauss, Assistant Attorney General of Iowa, Wisdom & Wisdom, of Des Moines, and F. H. Becker, County Attorney of Dubuque County, for appellees.

MULRONEY, *C. J.*

Plaintiff, the owner of a three acre tract of land, used solely for agricultural purposes, in Epworth School District, in Dubuque County, filed her petition challenging the constitutionality of the Act of the 51st General Assembly of Iowa, known as the Agricultural Land Tax Credit law (Chap. 192, Laws of the 51st G.A.; Chap. 426, Code, 1946) and asking the court to enter a declaratory judgment declaring said act unconstitutional and void on the following grounds: (1) that said act violates the provisions of Sec.

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6, Art. I and Sec. 30, Art. III of the Constitution of the State of Iowa, in that the law is of a general nature, but not of uniform operation, throughout the State of Iowa; (2) that the Act is in violation of Sec. 6, Art. I of the Constitution of Iowa, and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws; (3) that plaintiff is being deprived of money and property without due process of law and in violation of Sec. 9, Art. I of the State Constitution and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States.

Defendants, the state and county officers charged with duties under the act, assert the act is not violative of the above constitutional provisions. The evidence consisted largely of tabulations, which will be referred to later. The trial court declared the act constitutional and plaintiff appeals.

The act in question set aside $500,000.00 for the fiscal year commencing July 1, 1946, and the same amount annually thereafter from the General Fund of the state to be used to pay all of the general school fund taxes in excess of 15 mills on agricultural lands. If said fund was insufficient the act provides for payment on a pro rata basis. The term "Agricultural lands" is defined in the act to "mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes."

We have often expressed the rule which guides a court in determining whether or not a certain statute violates some constitutional provisions. In Santo *v.* State of Iowa, 2 Iowa 165, this court first stated the rule as follows:

"For some time after the establishment of the state government, it was doubted whether the judiciary possessed authority to declare and hold an act of the legislature unconstitutional and void, and the exercise of the power was declined by some courts. And now, although the power is

universally admitted, its exercise is considered of the most delicate and responsible nature, and is not resorted to, unless the case be clear, decisive, and unavoidable."

There has been no departure in the expressions of this court from the rule first stated in the Santo case.

I. The act in question is a plain tax exemption statute. It frees certain land from a tax burden. The fact that the property is relieved of the burden after assessment and levy is immaterial. It is the result, not the method that determines the character of the act. It is no less a tax exemption statute because the burden is assumed by the state. The point is that the agricultural property in some of the school districts of the state is relieved of part of the tax burden by this law. As to such property the act is a tax exemption statute. There is no special limitation of power as to tax exemption in the Iowa constitution, as there is in many state constitutions. But that does not mean the power of the state to exempt property from taxation is unlimited. The power to tax includes the power to exempt, and in the absence of constitutional restrictions on exemptions the state's power to exempt is subject only to the limitation that the exemption shall serve some public purpose. The right to exempt property from taxation is to be exercised on reasons of state policy and presumptively such exemptions must contribute to the general public benefit.

The theory upon which the grant of an exemption must rest if its constitutionality is to be upheld is that it will benefit the body of the people and not upon any idea of lessening the burdens of the individual owners of property. 51 Am. Jur. Taxation, sec. 504; Boss *v.* Polk County, 236 Iowa, 384, 19 N. W. 2d 225; 61 C. J. Taxation, sec. 61.

II. Since a tax exemption statute is an exercise of the power to tax, the constitutional provisions with respect to tax laws are applicable. Art. III, sec. 30 of the Iowa constitution provides that the legislature shall not pass local or special laws "for the assessment or collection of taxes."

Art. I, Sec. 6, provides that "all laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or

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immunities which, upon the same terms shall not equally belong to all citizens." The last constitutional provision, when applied to tax legislation, means, in its first part, that laws that impose taxes must operate uniformly. In its second part, the general assembly is prohibited from granting tax exemptions (privileges or immunities) to any citizen, or class of citizens, unless the law makes the tax exemption applicable upon the same terms to all citizens.

In 16 C. J. S. Constitutional law, sec. 465 d, the rule is stated:

"Where, however, an exemption from taxation is not for a public purpose, it is peculiarly within a constitutional provision forbidding the grant of special privileges or immunities."

In Nathan *v.* Spokane County, et al, 35 Wash. 26, 76 P. 521, 524, where the court had before it the constitutionality of an act that allowed a tax deduction to an itinerant taxpayer, paying a second year's tax on the same property, it was held under a constitutional provision much like ours:

"Coming now to the consideration of the constitutionality of the proviso contained in the above statute, we think that the Legislature was without power or authority to enact any law providing that, after the payment of such taxes, the person paying them should be allowed certain deductions from the next regular assessment of such property. Article I, sec. 12 of the state Constitution, provides: 'No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.' "

See also City of Winchester *v.* Winchester Waterworks Co., 149 Ky. 177, 148 S.W. 1 and Purcell *v.* City of Lexington, 186 Ky., 381, 216 S.W. 599.

Actually our problem under the two constitutional provisions is narrowed to two inquiries that are closely related. (1) Is the purpose of the tax exemption statute a public purpose? (2) Is the classification reasonable and designed to carry out that purpose? If the purpose of the tax exemption act be not public, it violates both constitutional provisions, for in granting a tax exemption to some citizens and not to others for a purpose that is not public, it raises up a

special class to receive the tax immunity grant, and the balance of the public who are excluded, who always bear the burden of all tax exemption, must bear an increased tax burden to accomplish this special non-public purpose. Presumably, all citizens paying a certain tax have an equal interest in any reduction of that tax, unless it be that the reduction of the tax, as to some, serves some interest, which benefits others excluded, as a part of the public. If the public interest or benefit be not found, then a grant of tax reduction or exemption has been made to some without extending it to others equally entitled to the tax reduction. The tax legislation is therefore special for it does not operate upon all having an equal interest in the reduction. The rule is stated in City of Jackson *v.* Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, as follows:

"The limitation on the Legislature's power under the uniformity and equality clause of this section of the Constitution to exempt property from taxation and thereby discriminate against property taxes or the owners thereof is the same as the limitation on its power to discriminate between persons and property under any other constitutional guaranty, state or federal, of the equal protection of the laws. Gray, Limitation of Taxing Power, 656. This limitation is that there must underlie the exercise of the power 'some principle of public policy that can support a presumption that the public interest will be subserved by the exemption granted' (1 Cooley on Taxation (3d Ed.) 343), and the classification of the property exempted 'must be based on some reasonable ground, and some real difference which bears a just and proper relation to the object sought to be accomplished.' Adams v. Standard Oil Co., 97 Miss. 879, 53 South, 692; * * *."

III. What is the purpose of this tax exemption law? We turn to appellees' brief and argument. There we are told this law was part of the report and recommendation of the School Code Commission created by Chapter 314, Laws of the 50th General Assembly, which commission in its written report to the Governor, under date of July 1, 1944, stated:

"Agricultural lands within municipal corporation boundaries are now exempt by law from taxation for municipal

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purposes of which they do not receive the benefit, but the commission has found that applying the same remedy to agricultural lands within independent and consolidated school districts by taxing them in accordance with benefits received, is not practicable because it would result in confiscatory taxes against the non-farm property in these districts.

"A solution was sought by the 48th General Assembly when it passed the agricultural land school tax credit law, placing a ceiling of 15 mills for general school fund purposes on the taxes that could be levied against agricultural land within independent districts only. This was held unconstitutional by the Supreme Court because it discriminated against agricultural lands which did not lie in independent districts.

"Seeking a remedy in the same direction, this commission has had a bill drawn, and included in its report, patterned after the acts of the 48th General Assembly but applying the 15 mill limitation to all agricultural lands in the state. The mechanics of this bill are similar to the homestead tax credit act, which has been in effect for seven years, and the commission frankly recognizes that as to its constitutionality, it stands or falls with the homestead tax credit act.

"This bill, which proposes that the state assume the burden of school support which is shifted to it because of the 15 mill ceiling on agricultural lands, is desirable only as a supplement to the other state support bills proposed by the commission. The failure of the passage of the other state support bills should preclude the consideration of this bill."

Appellees quote from Governor Hickenlooper's message to the 51st General Assembly where, in commenting upon the School Code Commission, he said:

"The Fiftieth General Assembly established a School Code Commission and it has filed its report as provided by law. Each of you has received a copy and copies have been widely distributed by various interested groups throughout the state. Of the thousand copies authorized to be printed by the resolution, enough have been preserved so that each of you may have at least one additional copy. The School Code Commission has done an extensive amount of work. It was

aided by the studies of the former school code commission and it contributed a tremendous amount of time as a group. The individual members together with those who worked with them performed a fine service. Their report is concise and clear and covers a great portion of the field. They have recommended some twenty bills for your consideration.

"No doubt their report, and some of their recommended legislation, will raise controversy. Nevertheless, it is a capable job and I recommend your thorough study of it and the enactment of such recommended legislation, as may, in your judgment, be constructive and progressive. Our children should have the best and most efficient educational advantages."

Chapter 192, Laws of the 51st General Assembly, the act under discussion, was introduced in the legislature as House File 127 and appellees state that there was appended to the bill as it was introduced the following explanation:

"In many of our school districts agricultural lands are taxed to an excessive degree for school purposes.

"The Code Commission proposes this bill as a remedy, that a ceiling of 15 mills be placed on taxation of agricultural lands, over 10 acres in extent, for general school fund purposes. In districts where the millage rate is over 15 mills, the state shall reimburse the local district the amount on farm lands in excess of 15 mills."

From the foregoing it will be seen that the purpose of this tax exemption law was to correct the "excessive degree" of taxation of agricultural lands for school purposes "in many of our school districts." It was to correct an evil or irregularity which the legislature said existed.

The evil of excessive degree of taxation of agricultural land in a school district which the legislature saw is shown by the record, and developed in appellees' argument as follows: (again quoting from appellees' brief and argument)

"It has long been recognized that agricultural lands bear an excessive burden of taxation for general school purposes in comparison with other real estate. It is shown by Defendants' Exhibit 'C' that the ratio of the taxable farm property to taxable non-farm property in 97 consolidated school districts ranges from .97 in Cotter District to 62.80

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in Sommers District per child between the ages of 5 and 20 years, inclusive.

"In other words, farm property in those districts listed in the exhibit, the farmers paid (in 1941) from .97 to 62.80 times as much school taxes per child as did the owners of other property. "Exhibit 'D' shows the same tabulation for 99 independent city or town school districts and shows that the ratio per child of taxable farm property to taxable non-farm property runs from 1.17 in Ridgeway District to 68.37 in Jewell District. In other words, in those districts the taxable farm property per child is from 1.17 to 68.37 times as great as the taxable non-farm property. While these are extremes, the average ratio of taxable farm property to taxable non-farm property per child runs from four to seven times greater.

"Exhibit 'B' shows the same ratios of taxable farm property to taxable non-farm property per child in the 99 counties of the State. This ratio ranges from 1.85 in Dubuque County to 8.97 in Mills County and shows the average ratio of taxable farm property to taxable non-farm property per child in all of the counties of the State as 2.98. In other words, the taxable farm property is 1.85 times the taxable non-farm property in Dubuque County and 8.97 in Mills County; and the average taxable farm property is 2.98 per child times the taxable non-farm property per child in the entire state.

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"There is no question therefore, but that the taxable property per child, and consequently the school taxes paid, by agricultural lands is far greater per child than the taxable property, and consequently the school taxes paid per child in the non-farm areas, or in the cities and towns of the State. This demonstrates conclusively that agricultural lands do not receive the same benefits from the educational facilities supported as does other property."

We will take a typical school district such as Albion in Marshall County. The record shows that in 1941 there were 272 pupils in the district and $1,344,306.00 taxable value of property in the district. By pupil is meant a child between the ages of 5 and 20 years, inclusive. One hundred fifty-six

pupils are listed "in farm areas" and one hundred sixteen children are listed "in non-farm areas." Of the total taxable value of the property in the district, $1,229,328.00 is listed as "in farm areas" and $114,978.00 is listed as in "non-farm areas." By dividing the taxable value of the farm area property, or $1,229,328.00, by the number of pupils in the farm area, or 156, the figure, $7,880.00 is reached, and this is called "taxable property per child" in farm area. By dividing the taxable value of the non-farm area property, or $114,978.00, by the number of pupils in the non-farm area, or 116, the figure, $991.00 is reached, and this is called "taxable property per child" in non-farm area. The conclusion drawn is that the non-farm area bears a taxable value burden of $991.00 per non-farm area pupil and farm area property bears a taxable value burden of $7,880.00 per farm area pupil, or 7.95 times greater (measured in taxable value of property) than the non-farm area.

The act then assumes the right of the legislature to tax property in a certain area in a school district for school purposes, in the proportion that pupils dwelling in that area and the taxable value of the land in the area bear to the entire pupil population and the entire taxable value of the land in the school district. Or stated in another way, the purpose of the act is to equalize, at least in part, by tax exemption, the tax burden for schools to the benefit received. In no other way can we understand the argument of counsel for appellees or the statistical exhibits all referring to the ratio of taxable farm property to taxable non-farm property *"per child"*.

But a school tax is not laid upon property, or upon areas of property, in order merely to benefit the land by allowing pupils who live on the property or in the area to go to the schools erected and maintained by the school tax fund. It is laid for a public purpose.

Article IX of the Constitution of Iowa is devoted entirely to the "educational interests of the State." During Iowa's first 18 years of statehood the state's entire educational system was under a state board of education. The con-

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stitution of 1857 forbade any change in this system until the year 1863. After that date, by Sec. 15, Article IX, the legislature was given the "power to abolish or reorganize the Board of Education, and provide for the *educational interest of the state* in any other manner that to them shall seem best and proper." (Italics supplied.) It was under the above power that the 10th General Assembly in 1864 abolished the state board of education. We need not trace the subsequent legislation that continued the old school districts, first established by the old state board of education, as school corporations but we must assume that the entire school system, as it now exists in this state, comprising some five thousand school districts, was created and is now being supported and maintained to serve "the educational interest of the state."

The school tax is like that for the support of government. It is for the benefit of all the people. It is a tax for a public purpose. All enjoy the beneficial results of education and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each to this most important object. The test of equality of school taxes is not the direct benefit of school attendance by pupils who occupy the land taxed. Were that true the childless man would be exempt from the support of schools, and the sane and well from the support of hospitals. There is no irregularity merely because the benefits arising from the school tax are enjoyed, by those who pay it, in different degrees or because some enjoy some particular benefit such as school attendance and others do not. Everyone in the state enjoys the higher social order that flows from the state's educational system. A general tax law such as a school tax law exacts contributions in return for general benefits of a government that establishes a school system. The duty to pay school taxes is founded upon participation in general benefits. It cannot be laid or measured by a taxpayer's participation in some special benefit. See 51 Am. Jur. Taxation, sec. 9; C. M. & St. P. Ry. Co. v. Phillips, 111 Iowa 377, 82 N. W. 787. In 61 C. J. Taxation, sec. 3, the rule is stated:

"Taxes levied for governmental purposes are not imposed on the basis of a special and particular benefit accruing to each citizen in proportion to the taxes paid."

The following summary of principles, taken from 1 Cooley, Taxation, 4th Ed. 213-215, is applicable in this case:

"Taxes proper, or general taxes, it has been said, 'proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all.' That this is the correct theory is beyond doubt, but nevertheless the contention has often been presented that property receiving no direct benefit from a tax for a particular purpose should not be taxed for such purpose. However, it is almost unanimously held that it is no defense to the collection of a tax for a special purpose that a person liable for the tax is not benefited by the expenditure of the proceeds of the tax or not as much benefited as others. For instance, every citizen is bound to pay his proportion of a school tax although he has no children, or is not a resident, and this also applies to corporations; of a police or fire tax, although he has no buildings or personal property; or of a road tax although he never used the road. In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefits. So property within the limits of a municipality is subject to local taxation although it derives little or no benefit from the municipal government."

From the foregoing it will be seen that there was no legal inequality between taxes paid and benefits received by the owners of agricultural land in the school district.

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By figuring the tax burden on the land taxed for school purposes for each pupil on the land that is taxed, the legislature conceives an inequality exists, if, by such figuring, the tax exaction figured for each pupil on the land is higher than the tax exaction figured for each pupil on other land. Such figuring starts with an erroneous base. Carried to its logical conclusion it would mean a complete school tax exemption should be given to land on which there are no children. The entire argument for the existence of an inequality is grounded upon an assumption that school tax against property should be measured by pupils on the property; that there is, or should be, a definite exchange of equivalents between contribution for, and distribution of, general taxes; and that if there be a difference in benefits received or enjoyed, an inequality in the tax exaction is present. While there may be fewer families, and fewer pupils in the rural area, than there are in the remaining areas in a school district, this distinction furnishes no ground for lowering the rate in the rural area. If the number of children that a single taxpayer has bears no relation to the amount of tax he has to pay, it is difficult to see how it can be successfully argued that the number of children a group of taxpayers have does bear a relation to the amount of tax they all have to pay. We hold the tax exemption here was not for a public purpose. Since this is the first requisite of a tax exemption statute it is plainly unconstitutional under both constitutional provisions.

IV. Perhaps it would be unnecessary to pass to the second requisite of a tax exemption statute, or the classification. As previously stated, the classification would be illegal if the purpose of the entire tax exemption law was not a public purpose. The legislature is in the first instance the judge of the reasonableness of the classification for the exemption and it should not be disturbed by the courts unless it can clearly be seen that there is no fair reason why the law should not be extended to others equally situated with respect to the purpose to be accomplished.

In Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, we said by way of quotation from Essex County Park Commission v. West Orange, 77 N. J. Law 575, 73 A. 511:

"'That property of a class may be exempted from taxation is not to be denied, provided always that the classification is a proper one; but it is well settled that all members of a class shall be included in the taxing act whether for purpose of imposition of or exemption from taxation. * * * If a law excludes from its operation a single member of a class which it otherwise would affect, it will be invalid. * * *'"

We have seen that this law is enacted for the benefit of a class of owners who it is argued pay school taxes, by reason of their ownership of property in a certain area, in excess of the special benefits that accrue to the occupiers of the real estate in that area. If it is right to grant an exemption to this class of property owners, then all those who are similarly situated should be drawn into the class.

Finally, the legislature seeks to correct this inequality by the grant of a class exemption to agricultural lands. If we should admit the existence of a legal inequality then it is difficult to see how the classification made would be proper. Appellees' argument in support of the classification is that the statistical evidence demonstrates conclusively "that agricultural lands do not receive the same benefits from educational facilities supported as does other property." Surely a case could be made for business property. It does not, in the language of appellees' counsel, receive "the same benefits from educational facilities supported as does other property," if by "same benefits" is meant pupil occupancy of the property taxed. We need not pursue the argument further to show others similarly situated who are excluded by the exemption act. It is enough to say that if it be thought inequality exists because certain land does not receive the "same benefits" as other land and the "same benefits" is construed to mean pupil occupancy of the land, then no classification for tax exemption to correct the inequality would be proper unless it brought into the class of those to receive the grant, all

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lands that do not receive the same benefit, construed to mean the right of school attendance by the occupiers of the land taxed. The area classification of agricultural land to receive the grant of exemption, and other land to be excluded, is purely arbitrary.

For other cases on the subject of classification for purposes of taxation of agricultural lands and other real property, see note, 111 A. L. R. 1486.

V. Appellees argue that this court has already recognized the classification of agricultural land and other land for the purposes of taxation and cite the case of Leicht v. City of Burlington, 73 Iowa 29, 34 N. W. 494. There we upheld the constitutionality of Sec. 4, Chap. 47, Acts of the 16th General Assembly, (now sec. 404.4, Code, 1946) exempting from municipal taxation, lots of more than 10 acres, used for agricultural purposes, included within territory annexed to a city or town under other provisions of the above chapter. The plaintiffs in the case were owners of lots in Burlington containing less than 10 acres but used for agricultural purposes and they contended the 10 acre distinction in the act was arbitrary and the act was not uniform. We decided no arbitrary distinction or classification was created by the 10 acre limitation. It does not appear that the basic question of the right to classify for general taxation placing agricultural property in one class and non-agricultural property in another was considered or decided. That question of the 10 acre limitation is present in this case but we do not reach it because of our decision with respect to the right to exempt agricultural land in the first instance from the burden of a general tax. Granted that right we would be inclined to agree with counsel for appellees as to the legislature's right to make the limitation of 10 acres. Leicht v. Burlington, supra, supports such a right of subclassification within the general classification of agricultural lands.

The history of such an exemption as is contained in the statute considered in Leicht v. Burlington is necessary for a proper study of the force of this decision. Chapter 47, Acts of the 16th General Assembly which took

effect in 1876, was the first law with respect to taxation of agricultural land inside cities and towns. Between 1859 and 1874, some ten opinions of this court considered the question of the taxation of agricultural land that came within a city or town limits when those limits were extended. See Morford v. Unger, 8 Iowa 82; Butler v. Muscatine, 11 Iowa 433; Langworthy v. City of Dubuque, 13 Iowa 86; Langworthy v. City of Dubuque, 16 Iowa 271; Fulton v. City of Davenport, 17 Iowa 405; Deed v. Sanborn, 26 Iowa 419; O'Hare v. City of Dubuque, 22 Iowa 144; Hershey v. City of Muscatine, 22 Iowa 184; Deiman v. City of Fort Madison, 30 Iowa 542; Durant v. Kauffman, 34 Iowa 194. The above cases established and applied the following rule which is taken from Langworthy v. City of Dubuque, 16 Iowa 271:

"While the enlargement of the boundaries of a town, whereby the property of individuals is brought within the corporate limits without their consent, and subjected to taxation for town purposes, may not be an infringement of the constitution by taking private property for public use; yet, that it may become so, by an unreasonable extension of the town limits, in taking in lands and territory not at all needed for buildings and population, and taxing the same for the benefit of that portion of the corporate domain which may be peopled and occupied. In all such cases, while the courts will not interfere with the boundary limits, for the reason that mere extension, without the municipal imposition of taxation, is not in itself detrimental; yet that they will control and limit the taxing power, whenever practicable, to that point or line where it ceases to operate beneficially to the proprietor in a municipal point of view."

The court in the above case stated that the above proposition was no longer "open to controversy" in this state.

Thus it will be seen that long before the law, held constitutional in Leicht v. Burlington, supra, this court had recognized constitutional rights of citizens against the taking of private property for a public use would or could be infringed upon by the exercise, by a city, of its right to extend its city limits and draw in surrounding farm territory. We have said much in the course of this opinion of the legisla-

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ture's right to measure special benefits to general tax burdens, but this is also true: There is no power to tax when there is no benefit. 61 C. J. Taxation, sec. 2. The benefit may be the general advantages and protection afforded by the government but unless we find some benefit the taxation becomes an unconstitutional taking of private property for public use.

We will not review the facts in the cases last cited above. In some of them the farm land in the annexed portion was a mile or two from the old city limits and the built-up portion of the city. The character of the farm land did not change by the extension of city limits and obviously would not change for many years to come. In those cases where the court found as a finding of fact that no benefit was derived by including the land in the city limits such as no streets, and consequently no police or fire protection, the court held the property should not be taxed for municipal purposes until the municipality was prepared to extend to the annexed area some municipal benefits. In these holdings the court was giving expression to a basic theory of all taxation. In other words, the land in the extended area did not *immediately* change its characteristics by the drawing of a surveyor's line marking the new limits of the municipality. The municipality did not *immediately* extend the benefits, advantages, and protection of municipal government to the new land in the annexed territory. There was no law on the subject and the decisions all held it was a question of fact to be decided from the evidence in each case as to whether the agricultural land taken into the municipal limits actually received some benefit from a tax laid on the land in a municipality. In some of the cases the court held the tax was properly laid and in other the tax should not be imposed. It was a proper situation for a general law which would govern the taxation of annexed territory, before such territory began to receive the ordinary benefits municipal land enjoys. But it is extremely significant that the cases before the statute, and the statute itself, recognize that as soon as the land takes on some urban characteristics by the extension of streets and alleys to the extended portion, the exemption as to municipal taxes ends.

Neither the decision in Leicht v. Burlington, supra, nor the cases decided prior to the statute there considered, are authority for the appellees here. All of the land in the State of Iowa is in some school district. All of the land in the state of Iowa is burdened with a school tax to further the state's educational system unless an exemption, designed to carry out a public purpose, exists as to some of the land. The facilities of the state's system is available to all citizens of the state now. We have no problem of the extension of a district without any consequent advantages to the land in the extended area. The statute in Leicht v. Burlington, supra, recognized the exemption expired when municipal advantages reached the area without question of the degree of advantages enjoyed. That moment is here as to all the land now within the school district.

In the case of boundary extension, where taxpayers are drawn into a new taxing district, problems of taxation of property in the new area frequently arise at the outset. This is so in the case of school districts and the legislation was recognized that when boundary lines of school districts are changed, there may be an unequal levy for a time as to the property in the new district to effect an equalization. Section 274.21, Code, 1946.

VI. We need not review or comment upon the cases cited by appellees. They do not deal with legislative power to exempt from general taxes under constitutional provisions similar to ours. There is one exception to the above statement. In Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, cited by appellees, we considered a similar law passed by the 48th General Assembly which granted a similar tax exemption to agricultural land in independent school districts. We held the law unconstitutional because agricultural land in consolidated districts was not included in the class benefited. The opinion does not consider or decide the legislative power to give a tax exemption from general tax burden based on the ratio of children living in an area of the school district to the taxable value of the land in the area. But we are told in argument this question was presented in the briefs. We must confess it was and perhaps it would have been better if we had gone into the question then

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instead of basing the conclusion of unconstitutionality upon the obvious defect in the classification. But in any event, our decision of unconstitutionality of a similar statute in that case, based upon improper classification, is no authority for the constitutionality of the statute in the present case.

VII. Because we hold the statute violative of Art. I, sec. 6 and Art. III, sec. 30 of the Iowa Constitution, we need not go into the question of whether the statute also violates other provisions of the state or federal constitutions. But appellees argue, and the trial court held, that in any event the statute herein considered would be constitutional under Art. III, sec. 31 of the Constitution of Iowa. That section provides as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly."

The argument of appellees is that this is an appropriation act and if it be considered as "for local or private purposes" then it is still constitutional because the record shows it was passed by a two-thirds vote of the members elected to each branch of the General Assembly. Little need be said in answer to the argument. The above provision is no grant of authority to the legislature to enact any kind of an appropriation act by a two-thirds majority. As having some bearing thereon, see Love v. Des Moines, 210 Iowa 90; 230 N. W. 373. The prior section, or section 30, which we have heretofore considered prohibits local or special laws for the collection of taxes for state purposes. The terms local, special, or private, when applied to the purpose of legislation are practically synonymous. Words & Phrases, Perm. Ed. Vol. 25, pages 542-544. This is a law for the collection of taxes for state purposes. It violates section 30, Art. III, and it is not rendered constitutional

because of the appropriation feature of the act. The burden of all tax exemptions is borne by taxpayers. Possibly the legislature might have a right to scatter the burden of a legitimate tax exemption in a school district more widely than the district taxpayers. We need not decide the point. It is certain, however, their diffusion of the burden caused by the exemption adds nothing to the validity of the exemption.

Lest it be thought that by our quotation from the School Code Commission's report, we subscribe to the Commission's comments as to the homestead tax credit law, we will state that the constitutionality of that law has not been assailed in this court. Fundamental differences that are readily apparent exist as to the two laws. The same can be said with reference to the Soldier's Tax Exemption law touched on in appellees' argument.

VIII. The attorney general argues that the law is constitutional because the appropriation is for the benefit of agriculture, Iowa's basic industry, and the trial court, in his opinion stated: "that the act in question appropriates public money for the sole purpose of aiding agriculture, and is, therefore, an appropriation for public purpose."

We have heretofore pointed out that the burden of all tax exemptions falls upon the taxpayers. An appropriation to pay a tax exemption, granted for a public purpose, would certainly be an appropriation of public funds for a public purpose. But it is just as true that an appropriation to pay an invalid tax exemption—one that is not granted for a public purpose—would be an appropriation which would not be for a public purpose. In other words, the appropriation feature of the act has not the slightest significance on the question of the constitutionality of the act here involved. Indeed it has often been stated that all tax exemptions are actually appropriations of public funds. In legal concept all property owners bear the same duty to support the government by taxation. To the extent that one property owner is exempted from that duty there is an appropriation of tax revenue to that property owner. We have said that a tax exemption to be valid must be for a public purpose. The legislature, having

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the power to appropriate funds for a public purpose, has of course power to appropriate funds to pay all or a part of the burden of a valid tax exemption. For instance, the legislature has appropriated municipal, county, and state funds to pay the school taxes on property that is exempt from taxation because owned by a municipality, a county, the state, or the federal government and located in a school district. Chapter 284, Code 1946. Such appropriation acts lighten the burden of the property owners in the school district but they are valid because the tax exemptions of property owned by a municipality, county, the state, or the federal government, are valid. In other words, an appropriation act to pay the burden of a tax exemption adds nothing to the validity of the law. It is a mere legislative designation of the public fund that is to bear the burden of the exemption. If there is no appropriation act accompanying a tax exemption law, the payers of the particular tax, such as the school tax, bear the burden of the exemption and to this extent there is an automatic appropriation of school tax funds in favor of the exemptee. But whether there be an appropriation act, accompanying the tax exemption law or not, the constitutionality of the act will depend upon whether the exemption be for a public purpose. If it is not, then no appropriation act, to pay the exemption, will render the act constitutional. We have held the exemption here granted is not for a public purpose. It necessarily follows that the legislative designation of the fund that was to pay the exemption, or the appropriation from state funds of $500,000.00 to pay the tax credits allowed by the act, would not be for a public purpose. There is no merit in the attorney general's argument that the constitutionality of the act is saved by the appropriation feature of the act and his argument that this act "makes an appropriation for the benefit of agriculture as an industry." Such cases as Blume v. Crawford County, 217 Iowa 545, 250 N. W. 733, where an appropriation of county funds to a County Farm Bureau was upheld and Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, where an appropriation to pay a portion of the salary of a county agent connected with the agricultural college, and all the other cases cited by the attorney gen-

eral, discussing appropriations made for a public purpose, are not in point. The appropriation here made, as stated in the title to the act, is an appropriation to pay the "tax credits" allowed by the act. It is in no sense an appropriation "made for the benefit of agriculture as an industry" as the attorney general argues. The tax credits, or the exemptions, given to owners of agriculture lands in a school district, which the appropriation is designed to pay, are not, under the record, for the benefit of agriculture as an industry. The credits are given, under the undisputed record and under the attorney general's argument, because the legislature felt there was a relationship between property taxed for school purposes and the number of pupils living on the property. We have held the number of children living on the property taxed for school purposes bears no relation to the duty to pay school tax and that the school tax exemption in favor of the property with fewer children in proportion to the value of property is not for a public purpose. The exemption, therefore, was for a private purpose and it necessarily follows that the appropriation of state funds to pay the exemption would be for a private purpose.

IX. While the attorney general does not seem to argue that the exemption as distinguished from the appropriation, is for the purpose of aiding agriculture, or indeed for any other purpose than that of equalizing in part the school tax burden with respect to benefits, as previously analyzed, still we recognize that it is the duty of this court in passing upon the constitutionality of a law to consider other grounds upon which the constitutionality of the act might be sustained.

The trial court in his opinion stated that the public was benefited by this tax credit for agricultural lands because farming is Iowa's basic industry. It may be the trial court had in mind Article IX 2nd, sec. 3, Iowa Constitution wherein it is provided: "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, *and agricultural improvement*". (Italics supplied) We call attention to the fact that this article of the Constitution, as indicated by its

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title, deals exclusively with Education, School Lands, and School Funds and the specific section, or section 3, is entitled: "Perpetual support fund." It would seem that the encouragement to promote agricultural improvement found in this constitutional provision would be encouragement to devote part of the perpetual school fund for agricultural improvement. But in any event we recognize the general power of the legislature to pass a law in aid of agriculture. In Blume v. Crawford County, 217 Iowa 545, 250 N. W. 733, where we upheld the constitutionality of a state making appropriations of county funds to farm bureaus, we stated:

"So in the case at bar the legislature in chapter 138 of the Code has declared the public policy of this state, with reference to extending aid to agriculture, the great basic industry of this state. There is no inhibition against this power in any of the provisions of the Constitution, and it is not repugnant to any constitutional provision. The legislature, under the powers vested in it by the state, has extended aid to farm associations for the purpose of aiding agriculture, horticulture, animal industry, and similar kindred occupations * * * The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally. The act in question is a valid exercise of the state's governmental functions, * * *."

It will be noted in the constitutional provision the legislature is to encourage agriculture by "all suitable means" and in the Blume case we pointed out that the statute there considered was in furtherance of the public policy of the state and it was "not repugnant to any constitutional provision." It could hardly be argued that a discriminatory tax statute, in violation of other constitutional provisions would be upheld as being in aid of agriculture because the discrimination was in favor of agricultural lands. But, waiving the question, for the purpose of discussion, let us see if this act can fairly be said to be in aid of agriculture or for agricultural improvement.

Agriculture is the art or science of cultivating the ground, including the planting of seed, harvesting of crops, and the raising, feeding and management of livestock and poultry. Words & Phrases, Perm. Ed. Vol. 3, p. 46. When we speak of a law in aid or improvement of agriculture we mean a law for the betterment of this science or art of cultivation and livestock raising; a law that helps and benefits this so-called basic industry, as an industry.

Just how a partial school tax exemption to some but not all of the owners of agricultural land in this state will aid or better the science or industry of agriculture is beyond our comprehension and as stated we are not aided by any argument by the attorney general. According to the evidence the law would have effect in less than half of the five thousand school districts in the state. How is the agricultural industry, as an industry, improved by a law that grants public funds in the form of a tax exemption in aid of some owners of agricultural lands? A grant of partial relief from a tax burden to some owners of agricultural land is certainly not the kind of aid to agriculture that is part of the public policy of this state, nor can it be said to be in furtherance of agricultural improvement, if it be thought the constitutional section is applicable. What is meant is such a law as was before us in the Blume case, involving an appropriation to a non-profit association engaged in the benefit of agriculture, or the law before us in Fevold v. Board of Supervisors, 202 Iowa 1019, 210 N. W. 139, involving the suppression of bovine tuberculosis, or the law before us in Gray v. Thorne, 196 Iowa 532, 194 N. W. 961, involving the eradication of barberry plants. It is not enough that some incidental public benefit might result, when the direct and primary purpose is to aid individuals in the enterprises they have engaged in for private gain. In Lancaster v. Clayton, 9 Ky. 611, 5 S. W. 864, it is stated:

"The burden of taxation is justly a common one. Its object is to provide means for the protection and benefit of all; and this being so, all should help to bear it. An exemption to one person is but additional burden to another * * * It (the taxing power) cannot be used * * * to take from one person his property and give it to another one more

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favored, and this too, although it may incidentally benefit the community • • • Whatever directly promotes individual interest, although it may also tend incidentally to the public welfare, is essentially a private, and not a public, object; and it is the essential character of the object of the expenditure, and not the degree of the incidental public benefit, which must determine the validity of the tax."

See, also, Cooley on Taxation (4th Ed.) sec. 179, where it is stated:

"Indirect and incidental benefits which may result to the public do not constitute a public purpose where the direct object is private."

Of course agriculture is Iowa's basic industry but the individuals engaged in that industry are engaged in private business for private profit. A direct, specific, appropriation of public funds (and a tax exemption is an appropriation of public funds) to individuals engaged in the private business of farming, is for the private purpose of aiding them in their business. It cannot be called a public purpose merely because the farming business is a part of the agricultural industry. The manifest object of such state aid is the individual private business of the recipient.

Moreover, it is doubtful if there is any net incidental benefit to the public from such a law. In our modern integrated economy, the welfare of each person depends almost entirely on the use made of the productive capacity of all. In an agricultural state like Iowa, the welfare of all the people is so firmly based upon the productive capacity of agriculture, that the legislature has wisely said it is our basic industry, and its advancement is a proper objective of state aid to the end that the welfare of the general public be furthered. But the aid to agriculture that is a part of the public policy of this state means something that is designed to aid the productive capacity of those engaged in the industry. It does not mean mere income betterment by a direct grant of public funds to owners of agricultural lands, in the form of a tax exemption from the payment of a general tax. As bearing thereon see Deering & Co. v. Peterson, 75 Minn. 118, 77 N. W. 568, holding appropriation for seed-grain loans to farmers unconstitutional, and in Re Opinion of the Judges, 59 S. Dak. 469, 240 N. W. 600, hold-

ing appropriation to furnish feed to livestock raisers unconstitutional.

The trial court held that, "in so far as the act extends a credit to agricultural lands, * * * it indirectly benefits non-agricultural lands", because "farming is the basic industry of the state * * * upon which the general welfare and prosperity of the inhabitants depends." Such a conclusion is based upon circuitous reasoning. A short answer is that any incidental benefit accruing to the general public by reason of income betterment of agricultural land owners, is entirely offset by the increased tax burden the public must pay in order to give the agricultural land owners the tax exemption that results in their increased income.

Without further pursuing the subject, we hold the law cannot be sustained as being in aid of agriculture within the public policy of this state.

X. The attorney general argues that the law is actually an appropriation "in aid of public education." A simple reading of the law shows there is no appropriation in aid of education. The school districts receive no increase in funds by reason of the appropriation. They will receive no decrease in funds by our holding that the law is unconstitutional.

For the reasons stated herein the cause is reversed and remanded for a decree declaring Chapter 426, Code, 1946, unconstitutional.—Reversed and remanded.

Bliss, Oliver, Mantz and Hays, JJ., concur.
Garfield, Hale and Smith, JJ., dissent.

LAURA DICKINSON

v.

C. FRED PORTER, ET AL.

142-47072

GARFIELD, *J.* (Dissenting):

I respectfully dissent.

I. All the grounds upon which plaintiff attacks this statute were urged in Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, in an attack upon the earlier statute. Plaintiff's

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petition, briefs and arguments are largely patterned after and copied from parts of plaintiff's petition, briefs and arguments in the Keefner case. The single basis of attack which was sustained in the Keefner opinion, that the law "discriminates against those owning agricultural lands not located in an independent school district," was eliminated by the legislature in the enactment of the present statute and is not now advanced. If the contentions this plaintiff urges are sound now, they were sound when the Keefner case was decided. It would seem this court was not then convinced of the soundness of such grounds.

We should hesitate to declare the present act void since the legislature, after the Keefner opinion was filed, reasserted its power to enact the present law with the elimination of the objectionable feature pointed out in that opinion. See Stewart v. Board of Supervisors, 30 Iowa 9, 1 Am. Rep. 238, a leading authority which upholds a law authorizing a tax in aid of railroads, frequently cited throughout the subsequent history of this and other courts.

II. The presumption in favor of constitutionality is especially strong where the legislature has exercised the power to classify persons or property for purposes of taxation. Its determination of what is a public purpose is little short of conclusive upon the courts. It exercises the largest measure of discretion in these matters. Some of the many authorities which sustain these propositions are cited in Divisions VI and VII hereof. There is no dissent from them.

We have pointed out repeatedly the legislature has power to enact any kind of legislation it sees fit provided it is not clearly and plainly prohibited by some provision of the state or federal constitutions. Carlton v. Grimes, 237 Iowa 912, 943, 23 N. W. 2d 883, 899; Carroll v. City of Cedar Falls, 221 Iowa 277, 280, 261 N. W. 652, 654; Loftus v. Dept. of Agriculture, 211 Iowa 566, 569, 570, 232 N. W. 412. See also 16 C. J. S., Constl. Law, section 70.

It is not our province to pass upon the policy, wisdom or justice of a statute nor the expendiency of its enactment. The remedy for unwise or oppressive legislation within constitutional bounds is not to be found in the courts but by appeal to the justice and patriotism of the legislators. Mc-

Guire v. Railway, 131 Iowa 340, 349, 108 N. W. 902, 33 L. R. A. n. s. 706, and citations. See also Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579; 11 Am. Jur., Constl. Law, section 138.

The duty does not rest upon the attorney general to convince us the act in question is constitutional. Plaintiff-appellant has the burden to satisfy us beyond a reasonable doubt (Miller v. Schuster, 227 Iowa 1005, 1015, 1020, 289 N. W. 702, and citations; Loftus v. Dept. of Agriculture, supra, 211 Iowa 566, 570, 232 N. W. 412 and citations) the act plainly violates the constitutional provisions invoked and *to point out the manner or respect in which it violates them.* In other words, she must designate the grounds on which the particular constitutional provisions have been infringed—she "must point out and state with particularity the details of supposed invalidity." 11 Am. Jur., Constl. Law, section 132. To the same effect are 16 C. J. S., Constl. Law, section 96a; Peverill v. Board of Supervisors, 201 Iowa 1050, 1056, 205 N. W. 543.

Plaintiff has the burden to *negative every conceivable basis which might support this statute.* Madden v. Kentucky, 309 U. S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1386, cited with approval in Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 16 N. W. 2d 572, 578. To substantially the same effect are Carmichael v. Southern Coal & Coke Co. (Cardozo, J.), 301 U. S. 495, 57 Sup. Ct. 868, 81 L. Ed. 1245, 109 A. L. R. 1327, 1333, 1336, 1337, also cited by us with approval in the Merchants Supply Co. case; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 79, 31 S. Ct. 337, 340, 55 L. Ed. 369, 377, Ann. Cas., 1912C 160, from which we quote with approval in Berg v. Berg, 221 Iowa 326, 332, 264 N. W. 821. See also Tolerton & W. Co. v. Board Asst. & Rev., 222 Iowa 908, 913, 914, 270 N. W. 427, in which we unanimously upheld the Iowa Chain Store Tax Act, chapter 424, Code, 1946. Madden v. Kentucky, supra, upholds a state statute which places a tax of 50 cents per $100 on bank deposits outside the state and 10 cents per $100 on deposits within the state.

Reference has been made to the foregoing principles because it is plain the majority has ignored one or more of them.

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III. The majority holds the act violates Article III, section 30, and Article I, section 6, Iowa Constitution, on the ground it is a plain tax exemption statute not for a public purpose. It is apparent this is the principal ground on which the majority invalidates the act. *Appellant has never attacked this statute by pleading or in any other manner, either in the lower court or here, as a violation of these or other constitutional provisions on the ground it is a tax exemption law not for a public purpose.* On the contrary appellant strenuously argues it is not a tax exemption act. She says in her reply argument: "We submit the Act is not a tax exemption statute, nor a tax limitation statute. • • •

"Appellees jumped off on the subject of the right of the Legislature to grant tax exemptions, and seek to have the court consider the statute in question as an exemption statute. The short answer to this phase of Appellees' contention is that the act does not, either expressly or impliedly, exempt property from taxation. • • • (This sentence appears in heavy type).

"The question of the right of the state to exempt from taxation, and the limitations in respect thereto, are not proper subjects of this inquiry, as that question is not involved in a consideration of this statute."

It is true appellant pleaded in the court below and maintains here the act violates Article III, section 30, and Article I, section 6, but she specifies the ground of such violation as the unreasonable and arbitrary classification, in different respects, of the agricultural land to which the law applies. I concede the question of the reasonableness of the classification is properly raised but disagree with the majority's Division IV on that issue.

The majority has no right to reach out and supply the principal ground on which it holds this act void. In doing so it has assumed the role of advocate. This is a plain violation of the fundamental rule, repeatedly and universally recognized, that a reversal will not be ordered on a ground not properly raised in the court below, much less upon one not advanced in this court. Peculiarly applicable is Quong Wing v. Kirkendall (Holmes, J.), 223 U. S. 59, 63, 64, 32 S. Ct. 192, 193, 56 L. Ed. 350, 352.

IV. I concede, if the question were properly raised, that a tax law or a tax exemption law must, in a sense, be enacted for a public purpose. By this is meant no more than that such a statute must be enacted for the "public good" or the "public welfare," that "some principle of public policy" must underlie its enactment, it must be "clothed with a public interest."

A purpose is a public one which "promotes the general welfare and prosperity of the people who are taxed to sustain it." Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411. The purpose "may be only to remove 'obstacles to a greater public welfare'." Heisler v. Thomas Colliery Co., 260 U. S. 245, 256, 43 S. Ct. 83, 67 L. Ed. 237, 241. See also 51 Am. Jur., Taxation, section 504, cited by the majority. Further authorities on the question what is a public purpose are cited in Division VI hereof.

Whether, as the majority holds, a tax exemption statute not for a public purpose would violate the equality and uniformity provisions of our state constitution (Art. III, sec. 30, and Art. I, sec. 6) or would be a violation of due process is a question on which there is not complete agreement. That question need not be considered. Due process would doubtless be violated by the enactment of such a statute for a purely private purpose. See 61 C. J., Taxation, section 100; Carmichael v. Southern Coal and Coke Co., supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A. L. R. 1327, 1336, and citations.

V. In my opinion the majority's attack upon this statute as a tax exemption measure not for a public purpose is not sustainable. It is obvious the majority's holding rests largely upon what it has concluded, *from the extrinsic matters* set out in its Division III, was the purpose of the lawmakers. Extended reference is made to a report of the school code commission to the governor, to the governor's message to the legislature, to a statement appended to the bill when it was introduced, and to a portion of one division of appellees' brief and argument. The division from which the majority quotes contains less than 12 pages and advances only one of different arguments by appellees in defense of this enactment. Appellees' whole brief consists of five divisions and 147 pages.

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It is true, of course, the history of legislation may be considered in construing an ambiguous statute. Independent Dst. v. Iowa Emp. Sec. Comm., 237 Iowa 1301, 1308, 25 N. W. 2d 491, 496, and citations. It is not claimed this act is ambiguous. And there is ample authority that the majority has no right to resort to these extrinsic matters as a foundation for invalidating this statute. Nor is this court concluded by one of the arguments of the attorney general (nor by his entire argument for that matter) in defense of the measure.

Paradoxically, appellant asserts in her reply brief and argument, I believe correctly, these extrinsic matters to which the majority attaches controlling importance, are entitled to no weight, or in any event are not binding on the court and that the validity of the statute should be determined from the act itself. She says:

"There is nothing ambiguous about the Act in question and its validity can and should be determined from the Act itself. Assuming without admitting that the Act is ambiguous and that the history of the legislation and the policy of the legislature may be considered by the court * * * it is not binding on the courts."

Even if appellant's admonition is disregarded and the extrinsic matters referred to by the majority are considered, they give little if any indication of the purpose of the legislators. Certainly they are not conclusive. The lawmakers are not concluded by the report of a commission to the governor, by the governor's message, nor by a statement appended to the bill when introduced which was no part of the final enactment. And surely the lawmakers are not concluded by some statistics introduced in evidence as part of a stipulation of the parties upon the hearing below, which were prepared by a professor at the state college.

The majority calls attention to nothing in the act itself which indicates the purpose the opinion imputes to the legislature. No such purpose is disclosed by the brief title to the act. It may be observed this act omits the rather long preamble and list of "Whereases" found in the earlier act, chapter 109, 48th G. A., invalidated in Keefner v. Porter, supra, 228 Iowa 844, 293 N. W. 501.

Since the majority has seen fit to quote from Governor Hickenlooper's message to the legislature it may be well to set out a part thereof the majority has omitted, immediately following the excerpt found in its opinion and to which appellees also call attention in argument:

"We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities. Our social and cultural stability and progress demand that we maintain a fair level of farm prosperity and that individual ownership of homes and business be encouraged."

Even assuming, as the majority has concluded, "the purpose of the act is to equalize, at least in part, by tax exemption, the tax burden for schools to the benefit received," it by no means follows the act is void. It is true it is no defense to the collection of a tax for a special purpose that the person taxed is not specially benefited by the expenditure of the proceeds of the tax nor as much benefited as others. Accordingly taxes *need not* be laid or measured by a taxpayer's participation in some special benefit. The authorities cited in the majority's Division III go only to this extent.

No authority cited sustains the majority holding that the legislature is powerless to consider the question of actual benefits received in classifying persons or property for taxation purposes. To undertake to do what the constitution does not require is not beyond the power of the legislature. As the majority concedes, there is no power to tax where there is no benefit. That legislatures may properly consider, in classifying persons or property for taxation, actual benefits is directly held in Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, which upholds a similar act; Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, 108, and citations; Apartment Owners' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445.

Assuming the majority has properly resorted to extrinsic evidence to find the purpose of the legislature, has correctly

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discerned such purpose and that it is impossible of accomplishment within constitutional bounds, the act should not be held invalid *unless it is not sustainable on any other theory.* This court is not concluded by what may have been the purpose of the lawmakers. Jury verdicts will not be set aside because inadequate reasons may have prompted the jurors to return them. Judgments of lower courts are permitted to stand even though they were reached upon fallacious reasoning. Acts of a coordinate branch of state government should not be set aside by the courts merely because of an erroneous purpose of the legislature. The majority's disregard of this fundamental principle underlies its opinion.

Now for some of the authorities which support the views expressed in this Division V.

Squarely in point on this branch of the case is Schmitt v. Nord, — S. D. —, 27 N. W. 2d 910, 915, in which the trial court had held invalid a tax of 10 cents a pound on butter substitute. In reversing the lower court and in holding it had no right to consider such extraneous matters as the majority has considered here, the South Dakota court says:

"In so concluding the trial court considered a resolution of a tax conference, and a message of the Governor which were before the legislature at the time the act was adopted, a so-called admission in the answer of defendants that the 'act was adopted for the purpose of equalizing, to some extent, the tax burden as between the dairy farmer and the oleomargarine and butter substitute industry' together with the burdensome nature of the rate. In other words, the trial court considered facts for the purpose of finding whether the legislature had exerted a lawful power under the influence of an improper motive. This was beyond its competence. Such conduct on the part of the legislature would amount to an abuse of one of its constitutional powers. Power abused does not cease to be power. Control of the exercise of legislative power is not a function of the courts. It is the absence of power to legislate which a court may declare in order to enforce the rights of litigants under the constitutions of the nation and state."

In A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (Sutherland, J.), in upholding a state tax of 15 cents a pound on butter substitutes, it is stated:

"Collateral purposes or motives of a legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry. • • •

"The statute here under review • • • must be construed, and the intent and meaning of the legislature ascertained, from the language of the act, • • •.

"From the beginning of our government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment."

"Since an act depends primarily on its objective result and effect for its validity, the fact that the legislature has mistaken ideas concerning it • • • has little bearing upon its constitutionality. Thus, a mistake of the legislature as to the constitutional basis for an act does not prevent the act from being a valid one if it is constitutional for other reasons." 11 Am. Jur., Constl. Law, section 101.

"One of the doctrines definitely established in the law is that if a statute appears on its face to be constitutional and valid, the court cannot inquire into the motives of the legislature. • • •

"The rule is equally settled that ordinarily the *courts are precluded from investigating beyond the statute itself the intention of those who enacted it.* If one of the aims of legislation is valid, it is not rendered invalid by the circumstance that the legislature had other purposes in view which, considered apart, it had no constitutional power to make effective. (Italics added.)

"• • • since the purpose of a statute should be determined from the natural and legal effect of the language employed, whether it is repugnant to the Constitution must therefore be determined from its natural effect when put into operation, and not from its proclaimed purpose." 11 Am. Jur., Constl. Law, section 141.

Recitals in a statute setting forth arguments or reasons for its enactment will not render it unconstitutional if it

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is otherwise valid. A statute is not rendered unconstitutional "by the fact that the legislature is mistaken as to the constitutional basis for the statute. • • •

"The controlling cause for the enactment of a statute does not in general affect its validity, • • •." 16 C. J. S., Constl. Law, section 71a, pages 149, 152, 153.

"Admissions, stipulations, or undenied allegations of the parties as to the unconstitutionality of the statute or as to the facts upon which the attack is based are not binding on the court in its determination." 16 C. J. S., Constl. Law, section 97.

As recently as in Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 16 N. W. 2d 572, 579, we said, through Justice Hale: "It is not the function of the court to consider the propriety or justness of an occupation tax, or seek for the motives or criticize the public policy which prompted its imposition."

Still more recently, in Plank v. Grimes, — Iowa —, 28 N. W. 2d 34, 36, we observed, through the present chief justice, "in passing on the constitutionality of a tax statute courts are concerned only with its practical operation, not its name. (Citations)."

From Carmichael v. Southern Coal & Coke Co., supra, 301 U. S. 495, 510, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 109 A. L. R. 1327, 1333; "A state legislature • • • cannot record a complete catalogue of the considerations which move its members to enact laws."

In Gregg Cartage & S. Co. v. U. S., 316 U. S. 74, 80, 62 S. Ct. 932, 935 —, 86 L. Ed. 1283, 1288, 1289, it is said concerning an assumption of fact contained in a statute, "Whether or not this assumption squares with philosophical doctrine, or even with reality, is not for our determination."

In 2 Sutherland Statutory Construction, 3d Ed. (1943), page 352, section 4808, this is found: "An act cannot be declared unconstitutional for matters contained in the preamble if the text of the act is free from constitutional objection. When the legislature enacts a statute within its constitutional power a statement of its reasons will not affect the validity of the act."

Jones v. Williams, 121 Tex. 94, 45 S. W. 2d 130, 79 A. L. R. 983, is a leading authority peculiarly applicable here. It considers a statute which remitted accrued penalties on unpaid taxes provided such taxes were paid by a certain date. It appeared from the preamble to the law the legislature purported to act under section 10, article 8 of the state constitution. The attorney general, who defended the statute in the courts, had ruled for many years there was no other constitutional basis for such measures. In an able opinion by the chief justice, the court unanimously held the act found no support in section 10, article 8 but was sustainable on other grounds notwithstanding the misapprehension of the legislature.

VI. Assuming, as the majority holds, this statute is a tax exemption measure which must be for a public purpose, I think it may fairly be upheld as an aid, encouragement or inducement to agriculture. As Governor Hickenlooper told the legislature in his message, "We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities."

It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being and prosperity of the state as a whole, not to mention the security of its people and their officials, are directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food, and it is no exaggeration to say that the future peace of the world may depend upon the ability of agriculture to supply their needs.

The attorney general, of whose argument the majority is so critical while it all but ignores appellant's brief and argument, contends at length this act is for the benefit of agriculture and the trial court so held. It is true part of the argument to that effect is in response to one of the main attacks appellant makes on this act—that it is an appropriation of public funds for a private purpose in violation of Article III, section 31, Iowa constitution. The majority makes no mention of this attack. It is unfair for the ma-

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jority to assert, in its Division VIII, the attorney general argues "that the constitutionality of the act is saved by the appropriation feature" thereof. Actually, appellant has attacked the law as an appropriation for a private purpose and the attorney general has very properly answered such attack.

Further, in view of the authorities cited in Division V hereof, the majority is not warranted in denying that this act is for the benefit of agriculture for the reason "The credits are given, under the undisputed record and under the attorney general's argument, because the legislature felt there was a relationship between property taxed for school purposes and the number of pupils living on the property."

Our constitution contains the express mandate, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." Art. IX, 2d div., sec. 3.

In Blume v. Crawford County, 217 Iowa 545, 550, 551, 250 N. W. 733, 92 A. L. R. 757, which upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions, we refer to agriculture as "the great basic industry of this state," say a law in aid thereof "is not repugnant to any constitutional provision" and "The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally." The plain implication is that what benefits agriculture benefits the state as a whole. For several decisions generally like that in the Blume case see Anno. 92 A. L. R. 768, 770.

Pertinent here is this language from Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411:

"* * * it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importance of every other industry in the state, as well as to the comfort and happiness of the whole people; * * *."

Our constitution makes no attempt to define what is a public purpose nor have the courts adopted any inflexible definition. Carroll v. City of Cedar Falls, 221 Iowa 277, 283, 261 N. W. 652; 1 Cooley on Taxation, 4th Ed., page 383, section 175; 61 C. J., Taxation, section 20. Appellant concedes "what constitutes a public purpose, as distinguished from a private purpose, is sometimes difficult of determination." Numerous decisions are to that effect.

"It has been quite uniformly held by the courts that the determination of such questions inheres largely in the legislative power. Within the zone of doubt, that is * * * a public purpose which the legislature deems to be such." Grout v. Kendall (Evans, J.), 195 Iowa 467, 477, 192 N. W. 529, in which we unanimously upheld the Soldiers Bonus Act under which it was proposed to issue $22,000,000 of state bonds and levy a tax to retire them in order to pay a "bonus" to Iowa soldiers and sailors of World War I.

The authorities agree not only that the legislature has the broadest discretion on the question what is a public purpose but also that such question is a changing one. See for example State v. Dammann, 228 Wis. 147, 280 N. W. 698, 709; Laughlin v. City of Portland, 111 Me. 486, 90 A. 318, 320, 51 L. R. A. n.s. 1143, Ann. Cas. 1916C 734; Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A. L. R. 828, 832; 1 Cooley on Taxation, 4th Ed., page 394, section 183.

It is also thoroughly settled that a law may serve the public interest although it benefits certain individuals or classes more than others. Carman v. Hickman County, supra, 185 Ky. 630, 215 S. W. 408, 411; State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 707, and citations; 1 Cooley on Taxation, 4th Ed., section 181. As the majority has pointed out, it is not necessary to the validity of a tax law that all taxpayers derive equal benefits therefrom.

In Carmichael v. Southern Coal & Coke Co. (Cardozo, J.) supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 1255, 1256, 109 A. L. R. 1327, 1333, 1336, it is said "This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation

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or exemption, infringe no constitutional limitation. (Numerous citations.) • • • The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficient enterprise. *This Court has often sustained* • • • *exemption for the encouragement of* ceives to be a beneficent enterprise. *This Court has often* consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare. (Citations) • • • whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court. (Citations)." (Italics added).

The Carmichael case, supra, upholds a state statute which imposes upon employers the obligation to pay a percentage of their payrolls into a state unemployment compensation fund and exempts those who employ agricultural labor and certain others.

Aero Mayflower T. Co. v. Georgia Pub. Serv. Com., 295 U. S. 285, 291, 55 S. Ct. 709, 79 L. Ed. 1439, 1444, upholding an exemption from an annual license fee of motor vehicles used exclusively in transporting agricultural and dairy products, observes: "We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 102, 105, in upholding an exemption from a license tax of planters and farmers grinding and refining their own sugar and molasses, states: "The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

In Watson v. State Comptroller, 254 U. S. 122, 124, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175, it is said, "Any classification is permissible which has a reasonable relation to some permitted end of governmental action."

In connection with the federal decisions cited herein and at least one other, Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, it is important to remember that state constitutional provisions such as our Article I, section 6, are not more restrictive upon the legislative power to tax or classify than the equal protection clause of the Fourteenth Amendment. Lake Superior Iron Mines v. Lord, 271 U. S. 577, 581, 46 S. Ct. 627, 70 L. Ed. 1093, 1101; Reed v. Bjornson, 191 Minn. 264, 253 N. W. 102, 105; Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 51 Am. Jur., Taxation, section 169. We have expressed ourselves to much the same effect in Berg v. Berg, 221 Iowa 326, 331, 332, 264 N. W. 821.

In 1 Cooley on Taxation, 4th Ed., pages 400, 401, section 189, it is stated:

"Extreme cases only as warranting interference by judiciary. It is only in a clear case that a statute imposing a tax will be held invalid on the ground that the tax is not for a public purpose. The question is one not 'of exclusive legal logic, but is one more or less of policy and wisdom, properly determinable in the light of public welfare, present and future, in a broad sense, and hence is not a pure judicial law question, except in those cases clearly outside of the twilight zone.'

"Money for a particular purpose may be raised by tax, it is said in one case, if there be the 'least possibility that it will be promotive in any degree of the public welfare.' • • • And still another presents the same idea in language but little different: 'To justify the court in • • • declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable, so clear and palpable as to be perceptible by every mind at first blush.' These are very strong and sweeping assertions, but they are supported by many others equally emphatic and comprehensive, which are to be met with in the adjudications of courts."

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And from 2 Cooley, pages 1373, 1374, section 653:

"An exemption, it would seem, should be made • • • on some ground of public policy, • • • such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made."

In State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 706, 709, it is said: "It is to be observed that the tendency of later cases is towards greater liberality in characterizing taxes or appropriations as public in purpose • • •."

A statement frequently made, taken from Cooley on Taxation, to which the majority subscribes, is that there must underlie a tax exemption "some principle of public policy that can support a presumption that the public interest will be subserved by the exemption granted." It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. And it is fair to conclude this law in its practical operation will both benefit and encourage agriculture. At least appellant has not demonstrated the contrary beyond a reasonable doubt.

Legislatures have frequently enacted and courts have sustained tax exemption measures to encourage an industry deemed to be vital to the welfare of the state or in furtherance of some related principle of public policy. For example, in Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, in sustaining a law quite similar to the one now under attack, the court said, "We believe it reasonable for a legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. (Citations)."

While the South Dakota constitution differs from ours, the Whitfield decision is direct authority here since it upholds the act as against the contention it violates the equal protection clause of the Fourteenth Amendment which the authorities agree restricts the power of state legislatures

to substantially the same extent as uniformity and equality provisions like those of our state constitution.

In Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283, an exemption from taxation of tracts planted with forest trees was upheld on the theory the beauty of New England scenery was largely dependent upon its forests and the act would benefit the lumbering industry, in which every citizen of the state has an interest.

Hermitage Co. v. Goldfogle, 204 App. Div. 710, 199 N. Y. Supp. 382, Affd. 142 N. E. 281, upholds an exemption from taxation for a limited period of certain new dwellings as an encouragement to the erection of homes.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109, and Schmitt v. Nord, — S. D. —, 27 N. W. 2d 910, 912, uphold statutes which impose a tax of 15 and 10 cents respectively upon each pound of butter substitute sold within the state. In the Schmitt case it is said, "Further, it (the legislature) could, we think, reasonably conclude that the fiscal interests of the state would be served by encouraging our dairy industry."

In Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770, an exemption is upheld of building and loan associations from the operation of a tax on the amount secured by mortgages, on the theory it is in recognition of the duty of the state to encourage the acquisition of homes by its citizens.

As observed in Division I hereof, we have upheld the exercise of the taxing power in aid of railroads. Stewart v. Board of Supervisors, supra, 30 Iowa 9, 1 Am. Rep. 238, cited with approval as recently as in City of Muscatine v. Swickard, 232 Iowa 1175, 1184, 6 N. W. 2d 23, 27, and Carroll v. City of Cedar Falls, 221 Iowa 277, 284, 261 N. W. 652. If resort may be had to the taxing power as an aid to railroads it would seem it may be exerted to aid agriculture.

VII. If, as stated, the classification of agricultural lands by the act in question rests upon some reason of public policy, there is no merit in appellant's attack upon the statute as such an unreasonable and arbitrary classification as to violate constitutional requirements. Furtherance of the

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public policy furnishes ample basis for the classification. See Cook v. Hannah, 230 Iowa 249, 253, 297 N. W. 262, 264; Hubbell v. Higgins, 148 Iowa, 36, 39, 40, 126 N. W. 914, Ann. Cas. 1912B 822; 16 C. J. S., Constl. Law, section 465d; 1 Cooley on Taxation, 4th Ed., page 713, section 334.

However, I am compelled to indicate disagreement with the holding in the majority's Divisions IV and V that the classification of agricultural lands by the act is purely arbitrary. The purport of such holding is that the legislature of this state is deprived by our constitution of the power to classify agricultural lands for purposes of taxation. This court has never so held, nor does any decision of ours support such holding. On the contrary we sustained such classification in Leicht v. City of Burlington, 73 Iowa 29, 31, 34 N. W. 494, which has stood for 60 years.

In its attempt to distinguish the Leicht case, it would seem the majority overlooked the statement in the opinion that "the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes." In Farwell v. Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, these words are quoted as stating the effect of the Leicht decision.

Further, I think Keefner v. Porter, supra, 228 Iowa 844, 852, 293 N. W. 501, implies such classification as found in the act in question would be valid. At least the opinion observes, "If there was anything that distinguished agricultural land located in an independent school district from similar land in other school districts we would have a different situation." The present act attempts no distinction between agricultural lands lying in different school districts.

As the majority observes, there is no special limitation in our constitution on the legislative power to grant tax exemption. Many state constitutions specify what exemptions may be granted and forbid others. 51 Am. Jur., Taxation, section 502; 2 Cooley on Taxation, 4th Ed., page 1382, section 661. Therein lies a controlling distinction between the present case and a few cases from other jurisdictions which at first blush may seem in conflict with some of the views herein expressed.

It is of course elementary that the legislature has wide discretion in determining what is a reasonable classification

in any kind of legislation. We have repeatedly and uniformly so held. See for example Cook v. Hannah, supra, 230 Iowa 249, 253, 297 N. W. 262, 265, and citations. However, in the enactment of tax laws courts accord to the lawmakers a broader power of classification than in some other legislation. Citizens Tele. Co. v. Fuller, 229 U. S. 322, 329, 33 S. Ct. 833, 57 L. Ed. 1206, 1213. Further, a classification, like this one, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption Louisville Gas & E. Co. v. Coleman, supra, 277 U. S. 32, 38, 48 S. Ct. 423, 72 L. Ed. 770, 774. See 1 Cooley on Taxation, 4th Ed., page 719, section 336.

A classification for tax purposes is not open to objection unless it "precludes the assumption" it "was made in the exercise of legislative judgment and discretion." Stebbins v. Riley (Stone, J.), 268 U. S. 137, 143, 45 S. Ct. 424, 69 L. Ed. 884, 889, 44 A. L. R. 1454, 1460; Campbell v. California, 200 U. S. 87, 26 S. Ct. 182, 50 L. Ed. 382. "The purpose for which property is kept or used has long been a recognized, if not a favorite, basis for distinction in taxation." 51 Am. Jur., Taxation, section 182. See also 61 C. J., Taxation, section 58, page 129; 1 Cooley on Taxation, 4th Ed., page 717, section 335.

It has long since been recognized that discriminations in taxation are not only permissible but sometimes the best interests of society require discriminations "which are necessary for the encouragement of needed and useful industries." Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 10 S. Ct. 533, 535, 33 L. Ed. 892, 895, repeatedly cited with approval, which upheld a discrimination between corporate and other securities.

The applicable law, amply supported by decisions, is well stated in 16 C. J. S., Constl. law, sections 520, 521, pages 1046-1055:

"The states may, therefore, tax certain classes of property to the exclusion of other classes, and, for different classes of persons or property, may prescribe different * * * rates of taxation, * * * even though the difference between the subjects taxed is not great. * * *

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"To be unconstitutional, the classification must be manifestly arbitrary and unreasonable, and not possibly so. Since taxation is so largely a question of policy, the legislature possesses the largest measure of discretion in these matters; and the courts will not declare a tax statute void as a violation of the equal protection guaranty so long as the classification or selection made by it is based on a reason, even though in their opinion the reason is a poor one and the statute itself is unjust, the test being good faith, not wisdom. • • • The state legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.

"Applying the foregoing principles *a state may, for tax purposes,* • • • *classify lands into tracts used for agricultural purposes and tracts used for other purposes.* • • •

"• • • a state may grant exemptions from taxes imposed by general laws; and such exemptions may be based on any reason that the legislature deems sufficient, with the limitation, however, that they must be founded on some reason and not on mere caprice." (Italics added.)

In People, ex rel. Hatch v. Reardon, 184 N. Y. 431, 445, 77 N. E. 970, 974, 8 L. R. A. n. s. 314, 112 Am. St. Rep. 628, 6 Ann. Cas. 515 (Affd. 204 U. S. 152, 27 S. Ct. 188, 51 L. Ed. 415, 9 Ann. Cas. 736), it is said:

"While a tax upon a particular house, or horse, or the houses or horses of a particular man, or on the sale thereof, would obviously invade a constitutional right, still a tax upon all houses, leaving barns and business buildings untaxed, or upon all horses or the sale thereof, leaving sheep and cows untaxed, however unwise, would be within the power of the Legislature This is true of a tax on all houses with 'more than one chimney,' or 'with more than one hearthstone,' or on all race horses. The power of taxation necessarily involves the right of selection, which is without limitation, provided all persons in the same situation are treated alike and the tax imposed equally upon all property of the class to which it belongs. (Citations)."

It is true, of course, there are common characteristics between agricultural land and other real estate in the matter of taxation for school purposes. But we cannot say there are not characteristics that differentiate it from other realty in relation to school taxes. This language from Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, in which, as stated, a very similar statute was unanimously upheld, is worth repeating:

"We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source. See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by individuals, but not if owned by corporations. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture. Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented. * * *

"In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification."

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We have gone much further in sustaining the power of the legislature to classify than we are asked to go here. See for example State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; Cook v. Hannah, 230 Iowa 249, 297 N. W. 262, and cases cited, Cert. denied 314 U. S. 691, 62 S. Ct. 361, 86 L. Ed. 553; Cook v. Dewey, 233 Iowa 516, 10 N. W. 2d 8; Knudson v. Linstrum, 233 Iowa 709, 8 N. W. 2d 495, which involved a law for the assessment and collection of taxes.

The two Cook cases, supra, considered curative acts applicable to tax proceedings which had the practical effect of discriminating between classes of taxpayers in the rate of taxation. As pointed out in Cook v. Hannah, lawmakers are powerless to cure by subsequent legislation what they could not have authorized in the first instance. And the power to enact curative laws is uniformly held to be subject to the same constitutional limitations as the exercise of any other legislative power. Anno. 140 A. L. R. 959, 972.

Other courts have sustained classifications for tax purposes less substantial than this classification of agricultural lands for the purpose of applying a different tax rate. Some of these decisions are mentioned in Division VI hereof. Attention is now called to some others.

There are sufficient differences between anthracite and bituminous coal to justify a tax on one while the other remains exempt. Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237. An exemption was upheld of tracts of less than 1000 acres from a provision that lands were forfeited by failure for five years to cause them to be entered on the books of the commissioners of revenue. King v. Mullins, 171 U. S. 404, 435, 18 S. Ct. 925, 43 L. Ed. 214, 226. The exclusion of notes secured by real estate mortgages from the operation of a tax on intangibles was sustained in Love v. Silverthorn, 187 Okla. 114, 101 P. 2d 254, 129 A. L. R. 676. A law which exacted a license fee from those engaged in the laundry business other than the steam laundry business but did not apply to women so engaged where not more than two women were employed was upheld in Quong Wing v. Kirkendall, 223 U. S. 59, 32 S. Ct. 192, 56 L. Ed. 350.

Apartment Operators' Assn. v. City of Minneapolis, 191 Minn., 365, 254 N. W. 443, and cases therein cited, uphold classifications for taxation based largely upon use of the property, which apply a different rate to each class. One class consists of real estate in which iron ore is known to exist. The ore, mined or unmined, is assessed at 50 per cent of value. Another class is unplatted realty, assessed at 33⅓ per cent of its value. All other real estate is assessed at 40 per cent of value. Another class is unplatted real estate used as a homestead, assessed at 20 per cent of value, provided if the value exceeds $4000, the excess is assessed at 33⅓ per cent. All platted realty used as a homestead is assessed at 25 per cent of value, provided any value in excess of $4000 is assessed at 40 per cent. In unanimously sustaining the classifications of homestead property, the court says:

"That use is a proper basis for classification cannot now well be questioned. • • • The classification in chapter 359, in so far as it is based upon use, is in line with the policy of both the state and nation as evidenced by previous legislation enacted for the benefit and relief of occupant owners of homes. Such classification has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public policy. The stability of government is promoted thereby. The obvious object of the Legislature was to provide for the necessary funds with which to carry on governmental functions without placing too heavy a burden upon real estate used by the owner as his home. The difference in use of the property has a fair and substantial relation to that object of the Legislature, and there is no discrimination between persons in similar circumstances; it operates equally upon all coming within the respective classes."

VIII. The majority sees "Fundamental differences that are readily apparent" between the act in question and our homestead tax credit law (chapter 426, Code, 1946) and the soldiers tax exemption statute (Code section 427.3) and warns that the constitutionality of these laws has not been assailed in this court. We are not told what these funda-

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mental differences are. I confess inability to see them, especially as to the homestead tax credit law as construed by this court in Ahrweiler v. Board, 226 Iowa 229, 283 N. W. 889.

I think this act is directly analogous to the homestead tax law. It is plainly patterned after the earlier statute. The public policy that is served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other, as stated in the Ahrweiler opinion, is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.

The various soldiers tax exemption measures are generally upheld upon a somewhat different consideration—that the legislature has the power to discharge, at least in part, the state's moral obligation to those who served in the armed forces in time of emergency. I think the constitutional basis for their enactment is not more secure than for the act in question.

While it is true this court has not passed upon the constitutionality of the homestead tax credit act or the soldiers tax exemption statute, there are intimations the former act is valid in Ahrweiler v. Board, supra, and Eysink v. Board, 229 Iowa 1240, 1247, 296 N. W. 376, 379. At least the Ahrweiler opinion emphasizes the fact the homestead tax law benefits the public at large by encouraging home ownership and the Eysink case calls attention to the legislature's wide discretion in the matter of classification. In Apartment Operators' Assn. v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, discussed in Division VII hereof, the power to apply different tax rates to homesteads is upheld.

IX. Under the logic of the majority opinion, absolute equality in the matter of taxation is required. An "iron rule of equal taxation" is neither attainable or necessary. See for example, Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579, and citations; Tolerton & W. Co. v. Board Assmt. & Rev., supra,

222 Iowa 908, 912, 270 N. W. 427; Colgate v. Harvey, 296 U. S. 404, 56 S. Ct. 252, 255, 80 L. Ed. 299, 102 A. L. R. 54, 61; Bell's Gap R. Co. v. Penna., supra, 134 U. S. 232, 237, 10 S. Ct. 533, 535, 33 L. Ed. 892, 895.

The legislative policy of this state throughout its history has been to grant numerous tax exemptions. It may be conceded such policy is of doubtful wisdom. It may even be admitted the act under consideration is unwise. But of course the question here is one of legislative power, not wisdom.

The very next section in our Code (of 1946) following the act in question lists 22 classes of property that are exempt from taxation. Many of the classes in turn consist of different enumerations. In all, something like 70 items of property are exempt. Under the majority's reasoning some of these exemptions of long standing cannot be upheld although apparently they have never been questioned.

If there is no rational basis for partial exemption from school taxes of agricultural land, how can the total exemption be upheld of all agricultural produce harvested by or for the taxpayer within the previous year? This exemption has stood since the Code of 1851. This provision removes from tax liability property of enormous value. What of the exemption in subsection 20, section 427.1, of stock of telegraph and telephone companies and several other designated kinds of corporations? If it be suggested these exemptions are for the purpose of avoiding "double taxation," why is not stock of railroads and other corporations included in the exemption? They pay taxes on their property just as telephone and telegraph companies do. Many other related questions might be asked.

X. The majority's Division IX recognizes the legislature's power to pass laws in aid of agriculture but says this is not such an act because it does not apply to the owners of all agricultural lands.

Appellant has attacked the classification provided by this law as unreasonable and arbitrary, and thus unconstitutional, in only three respects: (1) because of the 10-acre limitation (this seems to be the principal ground relied on); 2) it applies only to lands taxed for school purposes in

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excess of 15 mills; and 3) it applies only to agricultural lands. The majority's Divisions IV and V sustain only this third attack. No mention in the entire opinion is made of the second attack. And the majority states in its Division V it does not consider the validity of the 10-acre limitation but adds that if the right is granted to exempt agricultural land from the burden of a general tax "we would be inclined to agree with counsel for appellees as to the legislature's right to make the limitation of 10 acres. Leicht v. Burlington, supra, supports such a right of sub-classification within the general classification of agricultural lands."

In view of this conclusion of the majority, appellant's second and third attacks have not been considered herein. Nor should the majority resort to either of them in its Division IX. To do so is a repudiation of the position taken in its Divisions IV and V.

Division IX further holds the act in question is not a valid encouragement to agriculture because it is not such a law as appropriates funds to county farm bureaus or authorizes a tax for the suppression of bovine tuberculosis or provides for the eradication of barberry plants. Also, without the citation of authority, that "the aid to agriculture that is part of the public policy of this state means something that is designed to aid the productive capacity of those engaged in the industry." We have never before so restricted the legislature's power. But even assuming it to be a proper restriction, it is by no means clear the productive capacity of agriculture will not be encouraged by the present act fully as much as by such laws as the majority concedes and we have held are valid.

Three decisions are cited in support of the majority's Division IX. Lancaster v. Clayton (1887), 9 Ky. 611, 5 S. W. 864, properly invalidates a special attempt to exempt from taxation one particular property—a hotel. It is obviously inapplicable to the case at bar. The decision states, "It is often difficult to draw a line showing clearly the degree of benefit the public must derive from an enterprise in order to sustain an exercise of the taxing power in its favor."

Deering & Co. v. Peterson (1898), 75 Minn. 118, 77 N. W. 568, cited by the majority, holding invalid an appropriation for seed grain loans to farmers "whose crops were de-

stroyed by hail or storms last year" is also not analogous. Nor is In re Opinion of the Judges (1932), 59 S. D. 469, 240 N. W. 600, wherein the court holds tax moneys could not be used to furnish "aid in the form of feed or feed loans to the citizens who may need same for carrying their livestock through the winter."

Apparently the South Dakota court did not feel its earlier decision was at all analogous to Great Northern R. Co. v. Whitfield, supra (1937), 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, in which a law very similar to the act in question was unanimously upheld as a valid inducement to agriculture. In re Opinion of the Judges, supra, is not mentioned in the Whitfield opinion and apparently was not cited in the briefs. Why the majority should ignore the Whitfield case is not clear. The majority opinion is a repudiation of the doctrine that a state may, through its tax laws, offer inducements to an industry deemed essential to the state's welfare.

But recent decisions are not all in line with Deering & Co. v. Peterson, supra. It is regrettable the majority sees fit to commit this court to a decision contrary to the trend of authority. After stating the doctrine announced in Deering & Co. v. Peterson and another early decision, State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 19 Am. Rep. 99, it is said in 2 Am. Jur., Agriculture, section 28: "On the other hand, there is respectable authority supporting the more recent rule that emergency seed and feed loan statutes may be a proper exercise of governmental power. • • • It should be observed that more recent decisions in jurisdictions formerly adhering to the rule that seed and feed loan legislation in aid of farmers whose crops were destroyed is invalid have qualified, if not repudiated, the rigid reasoning upon which the earlier determination rested."

3 C. J. S., Agriculture, section 9b, states: "Certain statutes for direct state aid to individuals, as, for example, by means of loans on farm property or, in an emergency, by financing farmers and stock raisers, have been held valid; on the other hand, a statute providing for seed-grain loans has been held invalid as appropriating public money for a private purpose (citing Deering & Co. v. Peterson)."

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For decisions upholding acts quite similar to the law held invalid in Deering & Co. v. Petersen, see Anno. 92 A. L. R. 768.

The majority's condemnation of this act as "A direct, specific, appropriation of public funds • • • to individuals engaged in the private business of farming, (is) for the private purpose of aiding them in their business" is not justified. It is true the owners of agricultural lands to which the law directly applies benefit therefrom more than other members of the public. But this does not invalidate it.

The taxpayer receives no money under the act. A ceiling of 15 mills for taxation for school purposes is placed upon his property and the appropriation makes up the resulting loss to the school districts. It is no more a direct appropriation to the taxpayer than is the homestead tax credit law, the soldiers tax exemption statute or any other tax exemption measure. Under the majority's logic, any tax exemption of private property could be invalidated and the legislature deprived of the power to exempt from taxation any property not held for a public purpose.

I recognize of course our right and duty to declare statutes void if their violation of the constitution, as we have so frequently said, "is so clear, plain, and palpable as to leave no reasonable doubt on the subject." In my opinion this is not such a case.

I would affirm.

Hale and Smith, JJ., join in this dissent.

APPENDIX "C"

IN THE SUPREME COURT OF IOWA

Filed December 14, 1948

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47072

LAURA DICKINSON, *Appellant*,

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court.—John G. Chalmers, Judge

Equity suit for declaratory judgment that the Iowa Agricultural Land Tax Credit Act (Ch. 426, Code, 1946) violates certain provisions of the state and federal constitutions. From a decree in favor of defendants plaintiff has appealed. —Affirmed.

Clewell & Cooney, and Wm. C. Fuerste, all of Dubuque, for appellant.

Robert L. Larson, Attorney General, Oscar Strauss, Assistant Attorney General, Wisdom & Wisdom, all of Des Moines, and F. H. Becker, of Dubuque, County Attorney, for appellees.

GARFIELD, J.:

Because a rehearing was granted, the former opinion herein, reported in 31 N. W. 2d 110, is withdrawn and the following substituted therefor.

Plaintiff, who owns a 4-acre tract used solely for agricultural purposes in Epworth School District, Dubuque County, challenges the Agricultural Land Tax Credit Act (Ch. 426,

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Code, 1946) on the grounds, insofar as here urged, it violates: (1) Article III, section 30, and Article I, section 6, Iowa constitution, and section 1 of the Fourteenth Amendment to the federal constitution in that the law lacks uniformity and provides arbitrary and discriminatory classifications, and (2) Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. The trial court held the law was not unconstitutional upon the grounds urged and plaintiff has appealed.

The challenged act, passed by the 51st General Assembly (Ch. 192) in 1945, appropriates for each fiscal year $500,000 to be apportioned as a credit against the tax on each tract of agricultural lands in school districts where the millage for the general school fund exceeds 15 mills. The amount of such credit is the amount by which the school tax exceeds a tax based on a levy of 15 mills. To be entitled to the credit each owner must deliver to the assessor or file with the county auditor a verified statement and designation of the agricultural lands upon which credit is claimed. (Section 426.4.) If the appropriation (of $500,000) is insufficient to pay the credits in full they shall be paid on a pro rata basis. (Section 426.9.)

Agricultural lands are defined by section 426.2 as "all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes."

The 48th General Assembly in 1939 by chapter 109 passed a law similar to the present Code chapter 426 except that it applied only to "agricultural lands" within independent school districts. An owner of agricultural land in a consolidated school district challenged the constitutionality of that act on all grounds now urged by plaintiff against chapter 426. We held the earlier law "clearly discriminates against those owning agricultural lands not located in an independent school district." We observed however, "If there was anything that distinguished agricultural land located in an independent school district from similar land in other school districts we would have a different situation." Keefner v. Porter, 228 Iowa 844, 852, 293 N. W. 501.

Following this decision the appointment of a commission was authorized by chapter 152, Acts 49th General Assembly, in 1941, and again by chapter 314, Acts 50th General Assembly, in 1943, to assist in the revision of laws relating to education and to prepare a proposed school code. The 50th General Assembly (Ch. 314, sec. 2) directed that the commission authorized by it "shall give particular attention to the tax structure of the State of Iowa in so far as it concerns the school system of the state, and make recommendations with reference to same, * * *." This commission in effect recommended adoption of the present law which was passed by the 51st General Assembly with only two dissenting votes in the house and one in the senate. This act applies the limitation of 15 mills to "agricultural lands" in all school districts, not merely independent districts, as did the earlier law held invalid in Keefner v. Porter, supra.

Since the single basis of attack sustained by the Keefner opinion was eliminated in the enactment of the present statute, of course it is not now advanced. In other respects, however, plaintiff's petition, briefs and arguments are largely patterned after and copied from plaintiff's petition, briefs and arguments in the Keefner case. Of course if the contentions this plaintiff urges are sound now, they were equally so when Keefner v. Porter was decided. It would seem we were not then convinced of the soundness of such grounds.

We should hesitate to declare the present act void since the legislature, after the Keefner opinion was filed, reasserted its power to enact the present law with the elimination of the objectionable feature pointed out in that opinion. See Stewart v. Board of Supervisors, 30 Iowa 9, 1 Am. Rep. 238, a leading authority which upholds a law (passed a second time with modifications, after a decree of unconstitutionality) authorizing a tax in aid of railroads, frequently cited throughout the subsequent history of this and other courts. See also Minsinger v. Rau, 236 Pa. 327, 84 A. 902, which considers an attack upon a law recommended by a commission and passed by two legislative sessions.

I. All presumptions are in favor of the constitutionality of this statute and it will not be held invalid unless it is

clear, plain and palpable that such decision is required. Miller v. Schuster, 227 Iowa, 1005, 1014, 1015, 1020, 289 N. W. 702, and citations; Loftus v. Dept. of Agriculture, 211 Iowa 566, 570, 232 N. W. 412, and citations; 16 C. J. S., Constl. Law, section 99a.

We have pointed out repeatedly the General Assembly has power to enact any kind of legislation it sees fit provided it is not clearly and plainly prohibited by some provision of the state or federal constitutions. Carlton v. Grimes, 237 Iowa 912, 943, 23 N. W. 2d 883, 899, and citation; Loftus v. Dept. of Agriculture, supra, 211 Iowa 566, 569, 570, 232 N. W. 412. See also 16 C. J. S., Constl. Law, section 70.

It is not our province to pass upon the policy, wisdom, advisability or justice of a statute. The remedy for unwise or oppressive legislation within constitutional bounds is not to be found in the courts but by appeal to the legislators. McQuire v. Railway, 131 Iowa 340, 349, 108 N. W. 902, 33 L. R. A., n. s., 706, and citations. See also Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579; 11 Am. Jur., Constl. Law, section 138.

The burden does not rest upon defendants (state and county officials charged with duties under the law) to convince us the act is constitutional. Plaintiff has the burden to satisfy us beyond a reasonable doubt (Miller v. Schuster and Loftus v. Dept. of Agriculture, both supra, and citations) the act violates the constitutional provisions invoked and to point out the manner or respect in which it violates them. In other words, she "must point out and state with particularity the details of supposed invalidity." 11 Am. Jur., Constl. Law, section 132. To the same effect are 16 C. J. S., Constl. Law, section 96 a, page 224; Peverill v. Board of Supervisors, 201 Iowa 1050, 1056, 205 N. W. 543. See also Quong Wing v. Kirkendall (Holmes, J.), 223 U. S. 59, 63, 64, 32 S. Ct. 192, 193, 56 L. Ed. 350, 352.

Further, it is plaintiff's burden to negative every conceivable basis which may support this statute. Madden v. Kentucky, 309 U. S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1386, cited with approval in Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 16 N. W. 2d 572, 578. See also Carmichael v. Southern Coal & Coke Co. (Stone, J.), 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed.

1245, 109 A. L. R. 1327, 1333, 1336, 1337, also cited with approval in the Merchants Supply Co. case; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 79, 31 S. Ct. 337, 340, 55 L. Ed. 369, 377, Ann. Cas. 1912C 160, from which we quote with approval in Berg v. Berg, 221 Iowa 326, 332, 264 N. W. 821; Tolerton & W. Co. v. Board Asst. and Rev. 222 Iowa 908, 913, 914, 270 N. W. 427.

II. Article III, section 30, and Article I, section 6, of our state constitution, invoked by plaintiff, require that the law in question have a uniform operation throughout the state. The effect of section 1, Fourteenth Amendment to the federal constitution as applied to this case is substantially the same as these uniformity provisions of our own constitution. In general, if a law does not offend against one constitution it is inoffensive to the other. Berg v. Berg, 221 Iowa 326, 331, 332, 264 N. W. 821; Lake Superior Cons. Iron Mines v. Lord, 271 U. S. 577, 581, 46 S. Ct. 627, 628, 70 L. Ed. 1093, 1101; State v. Henneford, 3 Wash. 2d 48, 99 P. 2d 616, 619; Schmitt v. Nord, S. D. , 27 N. W. 2d 910, 912; Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, 105; City of Jackson v. Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, 847; 51 Am. Jur., Taxation, section 169.

Both in her petition and in argument here plaintiff's complaint is that the statute conflicts with the above constitutional provisions in that the classifications in the law are unreasonable and arbitrary. It is contended there is no basis for separately classifying (1) agricultural lands (2) of ten acres or more (3) in school districts where the millage exceeds 15 mills. The contention the act appropriates public money for a private purpose in violation of Chapter III, section 31, Iowa constitution, will be considered later.

If there is any reasonable ground for the classifications in this law and it operates equally upon all within the same class, there is uniformity in the constitutional sense and no violation of any constitutional provision invoked by plaintiff. Iowa Mot. V. Assn. v. Board of Railroad Comm., 207 Iowa 461, 468, 221 N. W. 364, 75 A. L. R. 1, affd. 280 U. S. 529, 50 S. Ct. 151, 74 L. Ed. 595; 51 Am. Jur., Taxation, section 169. See also Hubbell v. Higgins, 148 Iowa 36, 39, 126 N. W. 914, Ann. Cas. 1912B 822; 61 C. J., Taxation, section 58.

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The statute amounts to a legislative finding there are sufficient differences between property to which the act applies and other property to justify the classification. We will not interfere unless plaintiff has proven the classification does not rest on a reasonable basis but is essentially arbitrary and palpably discriminating. Iowa Mot. V. Assn. v. Board of Railroad Comm., supra.

It is well recognized the legislature has a wide discretion in determining classifications to which its acts shall apply. Cook v. Hannah, 230 Iowa 249, 253, 297 N. W. 262, 265, and citations. In tax matters even more than in other fields legislatures possess the greatest freedom in classification. Madden v. Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1385. See also Citizens Telephone Co. v. Fuller, 229 U. S. 322, 329, 33 S. Ct. 833, 57 L. Ed. 1206, 1213; 1 Cooley, 4th Ed., section 334, pages 715, 716; 16 C. J. S., Constl. Law, section 520, page 1048.

It is not sufficient that the court may regard the reason for the classification a poor one. 16 C. J. S., Constl. Law, section 520, page 1049; 1 Cooley on Taxation, 4th Ed., section 334, page 714. The differences upon which the classification is based need not be great or conspicuous. 1 Cooley, 4th Ed., section 334, page 714, and citations.

"An iron rule of equal taxation" is neither attainable or necessary. Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579, and citations; Madden v. Kentucky, supra; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 10 S. Ct. 533, 33 L. Ed. 892, 895.

Further, a classification, as in the act here, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption. See Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 38, 48 S. Ct. 423, 72 L. Ed. 770, 774, from which we quote in Keefner v. Porter, supra (228 Iowa 844, 848); 1 Cooley, 4th Ed., section 336, page 719; 293 N. W. 501.

III. We consider first the classification of lands used for agricultural purposes. We are not convinced our legis-

lature may not separately classify such lands for taxation for school purposes. Nor have we ever held such a classification invalid.

"The purpose for which property is kept or used has long been a recognized, if not a favorite, basis for distinction in taxation." 51 Am. Jur., Taxation, section 182. See also 61 C. J., Taxation, section 58, page 129; 1 Cooley, 4th Ed., section 335, page 717; Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445.

It is true of course there are common characteristics between agricultural land and other realty in the matter of taxation for school purposes. But we cannot say there are not characteristics which differentiate it from other realty in relation to school taxes. We are not convinced the legislature could not with reason conclude that agricultural land derives less benefit, in enhanced value or otherwise, from the money raised by school taxes than other real estate. City or town residence property or real estate used for business purposes may well be affected by our school system in quite a different way than land used for agricultural purposes which consists of comparatively large tracts. The legislature could reasonably have concluded that agricultural lands are taxed excessively for school purposes as compared with property devoted to other uses and that such taxes should be equalized in accordance with benefits received.

Very likely other reasons occurred to the legislature why a distinction should be made between agricultural lands and other realty. We have indicated enough to justify our unwillingness to hold there is no possible rational basis for such classification.

It is no defense to the collection of a tax for school or other purposes that the person or property taxed is not actually benefited by the expenditure of the proceeds of the tax nor as much benefited as others. Accordingly a childless, nonresident or corporate owner of property may be taxed for school purposes. However, there is nothing in the constitutional provisions invoked by plaintiffs which prevents our legislature from considering actual benefits received in classifying persons or property for taxation.

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Nor has any decision come to our attention which demands a holding here the lawmakers are without such power.

The obligation of the individual to pay taxes is founded in his participation in the benefits arising from their expenditure. Thomas v. Gay, 169 U. S. 264, 277, 18 S. Ct. 340, 42 L. Ed. 740, 745. If it were practicable and possible to do so, all taxes should be apportioned among the people according to the benefit each receives. See 1 Cooley, 4th Ed., section 89, page 213.

That in classifying persons or property for taxation legislatures may consider actual benefits is held in Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483; Reed v. Bjornson, supra, 191 Minn. 254, 253 N. W. 102, 108, and citations; Apartment Operators' Assn v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, 445; Nance v. Harrison, 176 Ga. 674, 169 S. E. 22, 26. See also Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392; Philadelphia, B. & W. R. Co. v. Mayor and Council, etc., — Del. —, 57 A. 2d 759, 765.

Leicht v. City of Burlington, 73 Iowa 29, 31, 34 N. W. 404 (1887), upheld as uniform in the constitutional sense chapter 47, Acts 16th General Assembly (as amended, section 616, Code 1897, section 404.4, Code, 1946), which completely exempted from taxation for any municipal purpose, except road tax, lands within the extended limits of a city or town containing more than ten acres, occupied and used for agricultural purposes. The opinion states "the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes."

The language just quoted is repeated in Farwell v. Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, apparently as stating the effect of the decision in Leicht v. Burlington, supra. 1 Cooley, 4th Ed., Section 284, page 599, says that in Iowa an exemption from city taxation of agricultural or unplatted land in a city has been upheld, citing the Leicht case.

Philadelphia, B. & W. R. Co. v. Mayor and Council, etc., supra, Del. Ch, 57 A. 2d 759, 765, 766 (1948), cites Leicht v. City of Burlington, supra, with apparent approval and sustains a classification for taxation for city and school purposes under which rural or suburban property in a

city is taxed at half the rate applied to the built-up portions of the city. The court says, "inherent differences in its nature or character, and even in its use, may be sufficient" to support a classification of property for tax purposes.

Clear Lake Co-op. L. S. S. Assn. v. Weir, 200 Iowa 1293, 1298, 1299, 206 N. W. 297, upholds as of uniform operation what is now section 498.19, Code, 1946, relating to non-profit-sharing co-operative associations. The opinion states, "There is no industry to be found anywhere in which classifications based thereon are more natural, obvious, and exclusive than in agriculture. It is as distinct in its character as mining, manufacturing, banking, or any other branch or division into which society is economically divided."

Tigner v. Texas, 310 U. S. 141, 147, 60 S. Ct. 879, 84 L. Ed. 1124, 1128, sustains a state antitrust law which does not "apply to agricultural products or livestock in the hands of the producer or raiser." After referring to legislation which differentiates between agriculture and other industry, the court says, "These various measures are manifestations of the fact that in our national economy agriculture expresses functions and forces different from the other elements in the total economic process. Certainly these are differences which may be acted upon by the lawmakers."

Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, unanimously holds a statute quite similar to that here challenged does not violate the Fourteenth Amendment to the federal constitution which, under the authorities cited in Division II hereof and others, restricts the legislative power to substantially the same extent as the uniformity provisions of our state constitution. This language from the opinion is applicable here:

"We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source * * *. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due

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to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture. Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented. * * *

"In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification."

Clark v. Kansas City, supra, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, upholds legislation under which land used for agricultural purposes when not owned by corporations is not subject to municipal taxes. The decision is direct authority for the legislative right to classify agricultural lands and other lands for taxation for municipal purposes.

16 C. J. S., Constl. Law, section 520, pages 1046-1052, states: "The states may, therefore, tax certain classes of property to the exclusion of other classes, and, for different classes of persons or property, may prescribe different * * * rates of taxation * * * even though the difference between the subjects taxed is not great. * * * Applying the foregoing principles, a state may, for tax purposes * * * classify lands into tracts used for agricultural purposes and tracts used for other purposes."

Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 444, 445, and cases therein cited, uphold classifications for taxation based largely upon use of the property, which apply a different rate to each class. One class consists of real estate in which iron ore is known to exist. The ore, mined or unmined, is assessed at 50 per cent of value. Another class is unplatted realty, assessed at 33⅓ per cent of its value. All other real estate is assessed at 40 per cent of value. Another class is unplatted real estate used as a homestead, assessed at 20 per cent of value, provided if the value exceeds $4000, the excess is assessed at 33⅓ per cent. All platted realty used as a homestead is assessed at 25 per cent of value, provided any value in excess of $4000 is assessed at 40 per cent. In unanimously sustaining the classifications of homestead property, the court says:

"That use is a proper basis for classification cannot now well be questioned. • • • The obvious object of the Legislature was to provide for the necessary funds with which to carry on governmental functions without placing too heavy a burden upon real estate used by the owner as his home. The difference in use of the property has a fair and substantial relation to that object of the Legislature, and there is no discrimination between persons in similar circumstances; it operates equally upon all coming within the respective classes."

We have gone as far in sustaining the power of the legislature to classify as we have gone here. See for example State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; Cook v. Hannah, 230 Iowa 249, 297 N. W. 262, and cases cited, Cert. denied 314 U. S. 691, 62 S. Ct. 361, 86 L. Ed. 553; Cook v. Dewey, 233 Iowa 516, 10 N. W. 2d 8.

The two Cook cases, supra, considered curative acts applicable to tax proceedings which had the practical effect of discriminating between classes of taxpayers in the rate of taxation. As pointed out in Cook v. Hannah, lawmakers are powerless to cure by subsequent legislation what they could not have authorized in the first instance. And the power

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to enact curative laws is uniformly held to be subject to the same constitutional limitations as the exercise of any other legislative power. Anno. 140 A. L. R. 959, 972.

Other courts have sustained classifications for tax purposes no more substantial than this classification of agricultural lands for the purpose of applying a different rate of taxation for schools. We mention a few such decisions. There are sufficient differences between anthracite and bituminous coal to justify a tax on one while the other remains exempt. Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237. An exemption is upheld of tracts of less than 1000 acres from a provision that lands were forfeited by failure for five years to cause them to be entered on the books of the commissioners of revenue. King v. Mullins, 171 U. S. 404, 435, 18 S. Ct. 925, 43 L. Ed. 214, 226. Madden v. Kentucky, supra, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A. L. R. 1383, upholds a state statute which places a tax of 50 cents per $100 on bank deposits outside the state and 10 cents per $100 on deposits within the state. The exclusion of notes secured by real estate mortgages from the operation of a tax on intangibles is sustained in Love v. Silverthorn, 187 Okla. 114, 101 P. 2d 254, 129 A. L. R. 676. A law which exacted a license fee from those engaged in the laundry business other than the steam laundry business but did not apply to women so engaged where not more than two women were employed is upheld in Quong Wing v. Kirkendall, 223 U. S. 59, 32 S. Ct. 192, 56 L. Ed., 350. A tax on margarine containing less thar 20 per cent of animal fat but not if such content is 20 per cent or more is sustained in Ludwig v. Harston, — Wyo. —, 197 P. 2d 252.

IV. The classification of lands used for agricultural purposes may be upheld not only upon the considerations expressed in the preceding Division III but also as in furtherance of a public policy to aid or encourage agriculture. As stated, the burden rests on plaintiff to negative every conceivable basis upon which this statute may be upheld.

A classification is not arbitrary which rests upon some reason of public policy. Hubbell v. Higgins, supra, 148 Iowa 36, 40, 126 N. W. 914, Ann. Cas. 1912B 822; Cook v.

Hannah, supra, 230 Iowa 249, 253, 297 N. W. 262, 264; 1 Cooley, 4th Ed., section 334, page 713; Id., section 335, page 719, where it is said, "Public policy may also warrant a particular classification."

As stated in Watson v. State Comptroller, 254 U. S. 122, 124, 125, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175, "Any classification is permissible which has a reasonable relation to some permitted end of governmental action. * * * It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' (Citations.)"

The power of state legislature to adjust their tax laws in order to encourage an industry or undertaking deemed vital to the welfare of the state or in furtherance of some related principle of public policy has frequently been upheld.

The governor of the state in commenting upon the report of the school code commission said in his message to the legislature that enacted this law, "We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities." It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being of the state as a whole is directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food and agriculture must supply their needs.

Our state constitution contains the express mandate, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." Art. IX, 2d div., sec. 3.

We have frequently referred to agriculture as the basic industry in this state. See for example Blume v. Crawford County, 217 Iowa 545, 550, 551, 250 N. W. 733, 92 A. L. R. 757; Clear Lake Co-op. L. S. S. Assn. v. Weir, supra, 200 Iowa 1293, 1298, 206 N. W. 297. The Blume case upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions and says a statute in aid of agriculture "is not repugnant to any constitutional provision." The plain inference from the opinion is that what benefits agriculture benefits the state as a whole. Other decisions gen-

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erally like the Blume case appear in Anno. 92 A. L. R. 768, 770.

Pertinent here is this language from Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411:

"* * * it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importanec of every other industry in the state, as well as to the comfort and happiness of the whole people; * * *."

It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. We are not convinced the legislature might not fairly conclude this law in its practical operation will both benefit and encourage agriculture.

We will mention a few of the decisions which sustain tax laws designed to encourage an industry deemed vital to the welfare of the state or in furtherance of some related principle of public policy.

In Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, which, as stated, sustains a law quite similar to the one now under attack, the court says, "We believe it reasonable for a Legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. (Citations)." And the concurring opinion of Roberts, J., observes, "* * * a classification designed to conserve a source of tax revenue and to foster and promote agriculture and the common good is not arbitrary."

Carmichael v. Southern Coal & Coke Co. (Stone, J.), supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 1255, 109 A. L. R. 1327, 1333, 1335, upholds a statute which imposes upon employers the obligation to pay a percentage of their payrolls into a state unemployment compensation fund but exempts employers of agricultural labor and certain others. This is from the opinion: "This Court has

repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. (citations.) * * * The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficient enterprise. *This Court has often sustained * * * exemption for the encouragement of agriculture.* (citations)." (Italics added.)

Aero Mayflower T. Co. v. Georgia Pub. Serv. Comm., 295 U. S. 285, 291, 55 S. Ct. 709, 79 L. Ed. 1439, 1444, sustains an exemption from an annual license fee of motor vehicles used exclusively in transporting agricultural and dairy products and observers: "We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 102, 105, upholds an exemption from a license tax of planters and farmers grinding and refining their own sugar and molasses and states: "The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

In Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283, an exemption from taxation of tracts planted with forest trees is sustained on the theory the beauty of New England scenery is largely dependent upon its forests and the act would benefit the lumbering industry in which every citizen of the state has an interest.

Hermitage Co. v. Goldfogle, 204 App. Div. 710, 199 N. Y. Supp. 382, affd. 142 N. E. 281, upholds an exemption from taxation for a limited period of certain new dwellings as an encouragement to the erection of homes.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109, and Schmitt v. Nord, supra, S. D. , 27

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N. W. 2d 910, 912, sustain statutes which impose a tax of 15 and 10 cents respectively upon each pound of butter substitute sold within the state. In the Schmitt case it is said, "Further, it (the legislature) could, we think, reasonably conclude that the fiscal interests of the state would be served by encouraging our dairy industry." See also Ludwig v. Harston, supra, Wyo. , 197 P. 2d 252.

Mississippi Power & Light Co. v. Love, 201 Miss. 676, 27 So. 2d 850, upholds an exemption of certain leasehold interests in oil, gas and other minerals on the theory it would encourage the investment of capital in them and the legislature could assert with some real reason it would be in the interest of the general welfare of the state that investments in such leases be encouraged.

City of Jackson v. Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, 848, sustains an exemption for five years of insurance companies organized under the laws of Mississippi and domiciled there. The court observes that it may have occurred to the legislature there were not enough insurance companies in the state and it would be for the public good to encourage their formation and adds, "Other reasons for the exemption may be imagined."

In Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770, an exemption is upheld of building and loan associations from the operation of a tax on the amount secured by mortgages on the theory it is in recognition of the duty of the state to encourage the acquisition of homes by its citizens.

In Division III hereof we have referred to Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445, which upholds different classifications of property based on use, including homestead property. The principle we think is here applicable is thus stated in the opinion:

"The classification in chapter 359, in so far as it is based upon use, is in line with the policy of both the state and nation as evidenced by previous legislation enated for the benefit and relief of occupant owners of homes. Such classification has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public

policy. The stability of government is promoted thereby."

Since we have upheld the classification of lands used for agricultural purposes upon the reasons stated in Division III and this Division IV, it is unnecessary to consider whether, as suggested by the legislative commission that recommended the passage of the act and as argued by defendants, the classification might also be sustained as in furtherance of the reorganization of school districts in order to improve our educational system. We may observe, however, this might well have been one of the considerations that occurred to the legislature in making the classification and we cannot say such conclusion could not be reached in good faith. The test of reasonableness of a classification is good faith of the legislature in making it. 1 Cooley, 4th Ed., section 334, page 714.

V. There can be little question as to the legislative power to subclassify agricultural lands containing ten acres or more separately from smaller tracts of such lands. The power to classify includes the power to subclassify within reason. 1 Cooley, 4th Ed., section 333, page 711; 51 Am. Jur., Taxation, section 179; 61 C. J., Taxation, section 59. Here again, the larger and smaller tracts have certain characteristics in common, just as all classes of property do. But it is obvious there are important differences between them. We cannot say it is wholly arbitrary to draw the line at ten acres.

That some other dividing line might have been adopted does not establish the invalidity of the 10-acre limitation. Hubbell v. Higgins, 148 Iowa 36, 41, 126 N. W. 914, Ann. Cas. 1912B 822, which sustains a subclassification of hotels with ten or more guest rooms; Berg v. Berg, 221 Iowa 326, 334, 335, 264 N. W. 821; 1 Cooley, 4th Ed., section 337, page 720.

As indicated in Division III hereof, Leicht v. City of Burlington, supra, 73 Iowa 29, 34 N. W. 494, upholds a subclassification of agricultural tracts containing more than ten acres for purposes of municipal taxation as against the contention the 10-acre limitation was purely arbitrary. The opinion states, "It is of no use to consider the imperfection of the division. Absolute justice in taxation is unattain-

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able." This subclassification of agricultural tracts containing more than ten acres, sustained in the Leicht case, has been part of our statutory law for 70 years.

We are content to rest our conclusion the 10-acre subclassification is not arbitrary upon Leicht v. City of Burlington especially and Hubbell v. Higgins and Berg v. Berg, all supra. See also Tolerton & W. Co. v. Board Assmt. and Rev., supra, 222 Iowa 908, 270 N. W. 427, which sustains as nondiscriminatory various provisions of the Iowa Chain Store Tax Act (Ch. 424, Code, 1946). Section 424.4 of that law applies the same rate of tax per store until the number exceeds ten, then steps up the rate at each multiple of ten until the number of stores exceeds fifty, and to all above fifty stores the same rate.

VI. Plaintiff argues the act separately classifies or subclassifies agricultural lands into tracts lying within and those lying without school districts where the millage for the school fund exceeds 15 mills and says there is no basis for such classification. It is true the credit provided by the law is apportioned against the school tax on agricultural lands only in districts where such millage exceeds 15 mills. In a sense, therefore, the act does not apply in districts where the millage does not exceed such figure.

In reality, however, the law separately classifies only lands used for agricultural purposes and those not so used and then subclassifies agricultural lands into tracts containing ten acres or more and those not that large (section 424.2) for the purpose of applying a different tax burden to the lands thus classified in order to apportion the taxes to the actual benefits received, to encourage agriculture and, the legislature may also have felt, to further the reorganization of school districts so as to improve our educational system.

A ceiling of 15 mills for school taxes is placed upon agricultural tracts of ten acres or more and the state, to the amount of $500,000, reimburses the districts in which the ceiling is applied. The South Dakota law, upheld in Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, fixes eight mills as the ceiling for school taxes on agricultural lands

We have held the classification and subclassification of agricultural lands are not purely arbitrary for the purpose of thus apportioning the tax burden. In response to the contention there is an added subclassification because of the 15-mill ceiling which is purely arbitrary, we will say merely that under the authorities cited in Division V it was not wide of any reasonable mark to draw the line at 15 mills even though some other millage might perhaps have been specified.

Perhaps we should point out the 15-mill ceiling applies to any district where now *or in the future* such millage is exceeded. We are therefore not called upon to decide a question similar to one involved in such cases as Knudson v. Linstrum, 233 Iowa 709, 8 N. W. 2d 495; State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; State, ex rel, Pritchard v. Grefe, 139 Iowa 18, 117 N. W. 13.

VII. Plaintiff contends the act violates Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. We will assume, without deciding, as plaintiff argues, the law would violate this provision if the appropriation were for a private purpose, even though it passed each branch of the legislature by a two-thirds vote.

Since, as we have held, this act is a valid taxing measure it is not rendered invalid by the appropriation provision. The public policy in furtherance of which the classification is made for the purpose of applying a different tax burden or a partial tax exemption, if the law be considered a partial tax exemption measure, is sufficient to support the appropriation. An act cannot be said to be for a private purpose where "some principle of public policy" underlies its passage. Whether an appropriation connected with a taxing statute is for a public purpose depends upon whether the remainder of the statute is for such purpose. See 1 Cooley, 4th Ed., section 177.

Without the appropriation made by the act the loss of revenue to the school districts by the imposition of the ceiling of 15 mills would fall upon other property owners in the districts. Under the law as written, however, such loss

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is borne by the state up to the amount appropriated. The money is taken from one public fund and put into another.

That the appropriation feature of the act does not render it invalid in the respect claimed, see State ex rel. Board v. Snyder, 29 Wyo. 199, 212 P. 771, 777, 782, which sustains a law that exempts from taxation property to the amount of $2000 of certain war veterans and provides for reimbursement by a state appropriation to each county in the amount of county tax on the exempted property. The court holds it a valid tax exemption statute because the legislature might have found it served a public purpose as an incitement to patriotism and encouragement to defend the country in future conflicts and the validity of the law is not affected by the appropriation measure. This from the opinion is pertinent here:

"A lawful exemption from taxation cannot, we think, be regarded as a gift or donation to or in aid of the individual • • • in whose favor the exemption is declared. • • • Indeed, we do not think the statute makes a gift to the exemption claimant even indirectly. The state may be regarded as the sole actor. It exempts the property declared to be exempt, and stands the loss not only of the state tax which would otherwise be collected, but the county tax as well. The money appropriated is public money, whether in the state or county treasury, and by the statute is taken out of one public pocket or fund and put into another."

Our state constitution makes no attempt to define what is a public purpose nor have the courts adopted any inflexible definition. Carroll v. City of Cedar Falls, 221 Iowa 277, 283, 261 N. W. 652. See also 61 C. J., Taxation, sections 20, 21. Plaintiff concedes "what constitutes a public purpose, as distinguished from a private purpose, is sometimes difficult of determination." Numerous decisions are to that effect. The term "public purpose" is not to be construed narrowly. 1 Cooley, 4th Ed., section 175.

Courts are extremely reluctant to hold a tax statute invalid on the ground a tax is laid, an exemption granted or an appropriation in connection therewith made, for a private purpose. "It has been quite uniformly held by the

courts that the determination of such questions inheres largely in the legislative power. Within the zone of doubt, that *is* • • • a public purpose which the legislature deems to be such." Grout v. Kendall, 195 Iowa 467, 477, 192 N. W. 529, which unanimously upholds a Soldiers Bonus Act under which it was proposed to issue $22,000,000 of state bonds and levy a tax to retire them in order to pay a "bonus" to Iowa soldiers and sailors of World War I.

The authorities agree not only that the legislature has the broadest discretion as to what is a public purpose but also that such question is a changing one. See for example State v. Dammann, 228 Wis. 147, 280 N. W. 698, 709; Laughlin v. City of Portland, 111 Me. 486, 90 A. 318, 320, 51 L. R. A., n. s., 1143, Ann. Cas. 1916C 734; Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A. L. R. 828, 832; 1 Cooley, 4th Ed., section 183, page 394. The tendency of later cases is toward greater liberality in characterizing taxes or appropriations as public in purpose. State v. Dammann, supra, and citations.

A law may serve the public interest although it benefits certain individuals or classes more than others. Carman v. Hickman County, supra, 185 Ky. 630, 215 S. W. 408, 411; State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 707, and citations; 1 Cooley, 4th Ed., section 181, page 392.

Carmichael v. Southern Coal & Coke Co., supra, 301 U. S. 495, 515, 57 S. Ct. 868, 81 L. Ed. 1245, 1256, 109 A. L. R. 1327, 1336, states: "• • • whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court (citations)."

It is well said in 1 Cooley, 4th Ed., section 189, pages 400, 401:

"It is only in a clear case that a statute imposing a tax will be held invalid on the ground that the tax is not for a public purpose. The question is one not 'of exclusive legal logic, but is one more or less of policy and wisdom, properly determinable in the light of public welfare, present and future, in a broad sense, and hence is not a pure judicial law

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question, except in those cases clearly outside of the twilight zone.'

"Money for a particular purpose may be raised by tax, it is said in one case, if there be the 'least possibility' that it will be promotive in any degree of the public welfare. * * * And still another presents the same idea in language but little different: 'To justify the court in * * * declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at first blush.' These are very strong and sweeping assertions, but they are supported by many others equally emphatic and comprehensive, which are to be met with in the adjudications of courts."

And from 2 Cooley, 4th Ed., section 663, pages 1373, 1374:

"An exemption, it would seem, should be made * * * on some ground of public policy, * * * such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made."

Again, from 1 Cooley, 4th Ed., section 175, page 384: "In case of doubt, courts are largely influenced by the public policy of the state, in determining whether taxation is for a public purpose." See also 61 C. J., Taxation, section 20.

As previously indicated, there can be no question it is part of the public policy of this state to encourage agriculture. And the furtherance of the reorganization of school districts in order to improve our educational system would be as plainly part of our public policy. As hereinafter pointed out, it has been the policy of the legislature from its inception to grant numerous tax exemptions.

We are not convinced there is an absence of all possible public interest in the purposes for which the appropriation here is used. At least there is room for argument that both agriculture and the reorganization of our school districts will be encouraged as contributions to the welfare of the state as a whole. At best the question is not beyond the zone of doubt in which the legislative determination is conclusive on the courts.

In support of our holding see, in addition to authorities heretofore cited, State, ex rel. Chase v. Clausen, 110 Wash. 525, 188 P. 538, 14 A. L. R. 1133, 1142, which upholds an appropriation to purchase unoccupied land to be subdivided, improved and disposed of to certain war veterans, industrial workers and others desiring a rural life. The opinion observes, "* * * it cannot be said that the legislature has wrongly decided that to so encourage agricultural development in our state will promote its public welfare. It hardly needs argument to demonstrate that no other industry is so closely related to the welfare of the people as a whole."

VIII. The law in question seems directly analogous to the Homestead Tax Credit Act (Ch. 425, Code, 1946). It is plainly patterned after the homestead law. The public policy served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other, as stated in Ahrweiler v. Board, 226 Iowa 229, 233, 236, 283 N.W. 889, is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.

While we have not passed directly upon the constitutionality of the Homestead Tax Credit Act it apparently has not been questioned in the courts in the nearly 12 years since its passage (Ch. 195, Acts 47th G.A.). And there are intimations the act is valid in Ahrweiler v. Board, supra, and Eysink v. Board, 229 Iowa 1240, 1247, 296 N.W. 376, 379. At least the Ahrweiler opinion emphasizes the fact the tax credits were not a gift with no consideration requirements in return but resulted in benefit to the public at large by encouraging home ownership. The Eysink case calls attention to the legislature's wide discretion in the matter of classification. As previously stated, in Apartment Operators' Assn. v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, the power to apply different tax rates to homesteads is directly upheld.

The various soldiers' tax exemption measures (such as sections 427.3, 427.4, Code, 1946, parts of which have stood for many years apparently without challenge) are generally

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upheld upon somewhat different considerations—that the legislature has the power to discharge, at least in part, the state's moral obligation to those who served in the armed forces in time of emergency and to encourage similar patriotic efforts in the future. The constitutional basis for their enactment seems little, if any, more secure than that for the act in question.

As previously indicated, the legislative policy of this state throughout its history has been to grant numerous tax exemptions. Perhaps such policy is of doubtful wisdom. But of course the question here is one of legislative power, not wisdom.

There is no special limitation in our state constitution on the legislative power to grant tax exemptions. Many state constitutions specify what exemptions may be granted and expressly or impliedly forbid others. 2 Cooley, 4th Ed., section 661, page 1382; see also 51 Am. Jur., Taxation, section 502. Therein lies an important distinction between the present case and a few decisions from other jurisdictions which at first blush may seem in conflict with some of the views herein expressed.

The very next section (427.1) in the Code of 1946 following the act in question exempts from taxation 22 classes of property. Many of these in turn consist of different enumerations. In all, something like 70 items of property are exempt. If we were to follow the argument of plaintiff, many of these exemptions of long standing could not be upheld although apparently they have never been questioned.

If there is no rational basis for applying a different rate or granting a partial exemption from school taxes upon agricultural land, how can the total exemption be upheld of all agricultural produce harvested by or for the taxpayer within the previous year? This exemption has stood since the Code of 1851 and removes from tax liability property of enormous value. What of the exemption in subsection 20, section 427.1, of stock of telegraph and telephone companies and several other designated kinds of corporations? If it be thought these exemptions are for the purpose of avoiding "double taxation," why is not stock of railroads and other corporations included in the exemption? They

pay taxes on their property just as telephone and telegraph companies do. Many other related questions might be asked.

We conclude plaintiff has not demonstrated beyond a reasonable doubt the act in question violates, in the respects claimed, the constitutional provisions she has invoked. The decree is therefore affirmed.

Smith, C. J., and Bliss, Hale, Wennerstrum, and Mantz, JJ., concur.

Mulroney, Oliver and Hays, JJ., dissent.

APPENDIX "D"

IN THE SUPREME COURT OF IOWA

171 47072

LAURA DICKINSON, *Appellant,*

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. Grimes, Treasurer of State, of the State of Iowa, Allan T. Daykin, County Auditor of Dubuque County, Iowa, and Leo J. Meuser, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court.—John G. Chalmers, Judge. Filed—March 11, 1949.

Petition for rehearing—Denied.

I hereby certify that the foregoing is a full, true and complete copy of the order made by said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 2nd day of June, A. D. 1949.

HELEN O. GALVIN,
Clerk.

[SEAL.] *Clerk.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, State Comptroller, of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

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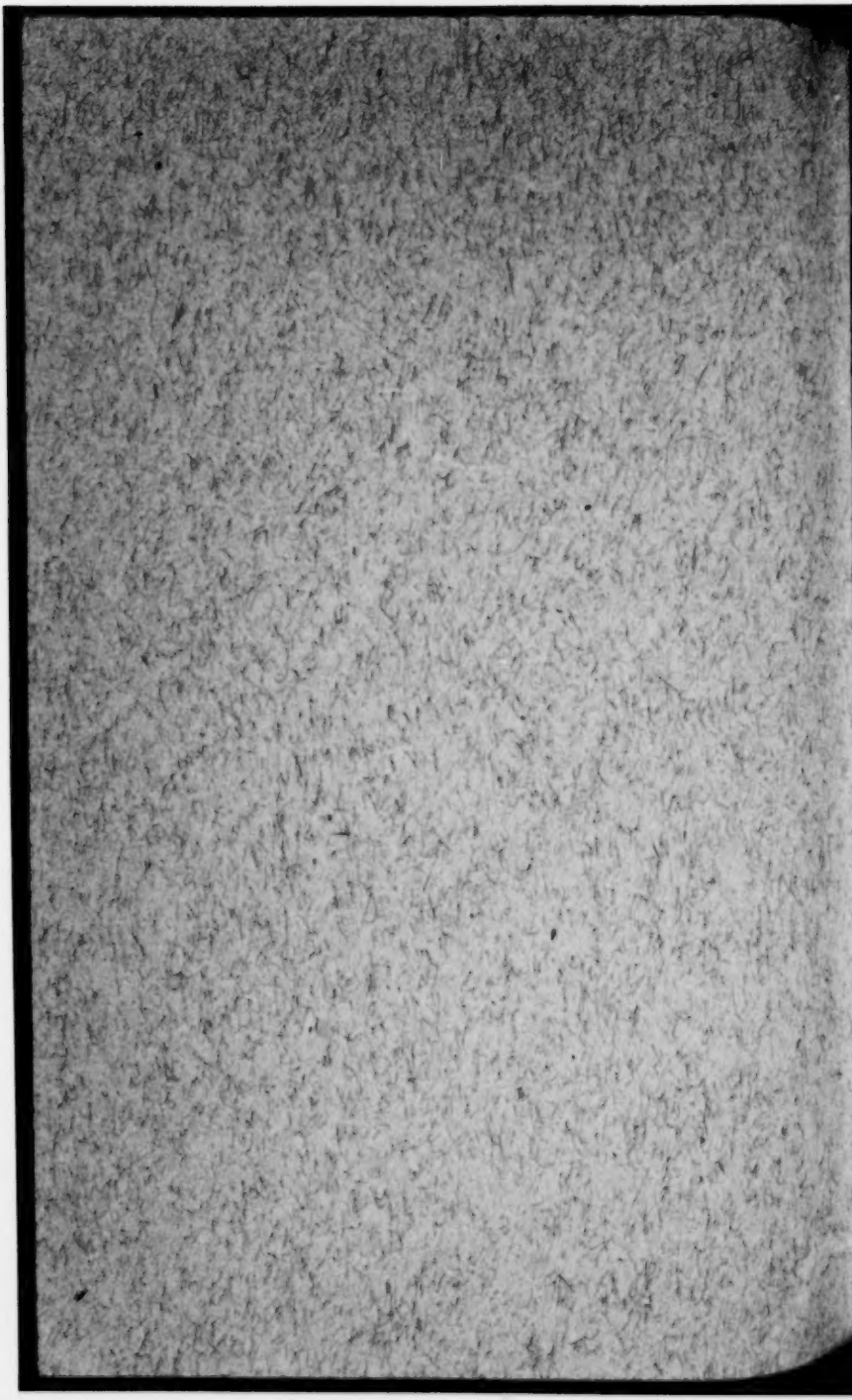

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C. FRED PORTER, State Comptroller, of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

Appellees' statement as to jurisdiction and motion to dismiss or affirm is limited exclusively to the following grounds, to-wit:

1. That the appeal is taken for the purpose of delay only.

2. That the federal questions involved are not substantial in character.

I.

THE APPEAL IS TAKEN IN GOOD FAITH AND NOT FOR THE PURPOSE OF DELAY.

A reading of the record will disclose that the appeal is taken in good faith and not for the purpose of delay.

II.

THE FEDERAL QUESTIONS INVOLVED HEREIN ARE SUBSTANTIAL IN CHARACTER.

Statute of the State of Iowa, the validity of which is involved.

The statute of the State of Iowa, the validity of which is involved herein is Chapter 426 of the 1946 Code of Iowa as amended, pages 1228 and 1229, the pertinent provisions of which are as follows:

"426.1 *Agricultural land credit fund.* There is hereby created as a permanent fund in the office of the Treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1946, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of five million dollars. Any balance in said fund on June 30 shall revert to the general fund.

426.2 *Definition.* 'Agricultural lands' as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes. Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands

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of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

426.3 *Where credit given.* The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the millage for the general school fund exceeds fifteen mills; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund fifteen mills, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which a homestead credit, as provided by Chapter 425, has been allowed for the year in which the agricultural credit is claimed.

426.6 *Computation by auditor.* On or before August 1 the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit hereunder together with the taxable value, and immediately upon receiving the certification of the budget from each school district shall determine the tax rate for the general fund of the district in the manner provided in Section 444.3, if the tax rate is in excess of fifteen mills he shall multiply the millage which is in excess of fifteen mills by the total taxable value of the agricultural lands entitled to credit hereunder in the district and on or before November 10 certify the amount thereof to the state comptroller. In the event the county auditor denies a credit upon any

such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. * * *.

426.7 *Warrants drawn by comptroller.* After receiving from the several county auditors of the state the certifications provided for in Section 426.6, and on or before December 10, the state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the tenth of November, he shall prorate the fund to the several county treasurers and notify the several county auditors of the prorata percentage at the time of mailing the warrants to them.

426.8 *Apportionment by auditor.* Upon receiving the warrant from the state comptroller the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon the tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit, the amount of said credit, and shall deliver the comptroller's warrant to the county treasurer with the tax lists. The county treasurer shall credit each school district with the total amount of the tax credits credited on lands in the district and shall show on each tax receipt the amount of tax credit for each tract of agricultural lands.

426.9 *Pro rata disbursement.* If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis."

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Nature of case and rulings below.

The statute in question sets aside five million dollars for each fiscal year to be used to pay all of the general school fund taxes in excess of fifteen mills on agricultural land as defined by the statute. The term "agricultural land" is defined in the statute to mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres and tracts of less than ten acres belonging to and a part of other lands of more than ten acres, lying within any school corporation in the State of Iowa and in good faith used for agricultural or horticultural purposes.

Under the statute in question owners of "agricultural land" as defined by the statute, are required to pay only a general school fund tax of fifteen mills on said property regardless of the amount of said tax actually levied in the school district in which the real estate is located. Owners of real estate not meeting the requirements of the statute regardless of its type and the use to which it is put, are required to pay the general school fund tax levied thereon to the full extent of the millage rate.

Appellant, the owner of agricultural land of less than ten acres in size in Epworth School District, Dubuque County, Iowa, brought action in the District Court of Iowa in and for Dubuque County, challenging the constitutionality of said statute, Chapter 426 of the 1946 Code of Iowa, and asking the Court to enter a declaratory judgment decreeing said statute unconstitutional.

The specific features of the statute, the constitutionality of which appellant attacked were (1) the private purpose of the statute and the appropriation provided therein, (2) the arbitrary legislative classification, and (3) the amount, manner and method by which the exemption or tax credit

and the allocation of said funds to the school district is determined under the statute.

Defendants-appellees, asserted the statute was constitutional.

The District Court declared the statute constitutional on January 6, 1947. A copy of the Court's decision is appended to the appellant's Jurisdictional Statement marked Appendix "A". Thereafter appeal was taken to the Supreme Court of the State of Iowa which court on February 10, 1948, in a five to three decision, with one Justice not sitting, entered a judgment and decree reversing the District Court and holding the statute unconstitutional in that (1) the purpose of the statute was private and not public, and (2) the area classification of agricultural land to receive the benefits of the statute, and other land to be excluded was purely arbitrary and unreasonable. A copy of said judgment and decree being appended to appellant's Jurisdictional Statement marked Appendix "B" and reported in 31 N. W. (2d) 110. Thereafter on December 14, 1948, more than ten months thereafter, the Supreme Court of the State of Iowa, withdrew its previous judgment and decree and entered in its stead a judgment and decree holding that said statute was constitutional and that it was not violative of the Iowa Constitution or the Fourteenth Amendment to the Constitution of the United States. A copy of said judgment and decree is appended to appellant's Jurisdictional Statement marked Appendix "C" and the decision is reported in 35 N. W. (2d) 66. Thereafter on March 11, 1949 a rehearing was denied appellant and the judgment and decree became final on that date.

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Points relied upon for reversal.

The Iowa Supreme Court erred in:

A. Holding and deciding that said state statute which classifies agricultural lands separately from other types of taxable real estate for purposes of school tax, school tax exemption and state appropriations in payment of school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

B. Holding and deciding that said state statute which classifies agricultural lands solely on the basis of their having been laid off or platted into tracts of ten acres or more, for the purposes of school tax, school tax exemption, and state appropriations in payment of school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

C. Holding and deciding that said state statute which classifies agricultural lands on the basis of their being located in a school district in which the millage for the general school fund exceeds fifteen mills, for the purposes of school tax, school tax exemption and state appropriations in payment of taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers

in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

D. Holding and deciding that said state statute which benefits only citizens and taxpayers owning real estate, (1) used for agricultural or horticultural purposes, and (2) laid off or platted into tracts of ten acres or more, and (3) located in a school taxing district in which the millage rate is in excess of fifteen mills, operates equally upon all citizens and taxpayers within the same class, and that said classification does not grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1, of the Fourteenth Amendment to the Constitution of the United States.

E. Holding and deciding that said state statute which appropriates public moneys, raised from statewide general sources of taxation, to the payment of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute in certain school districts of the State, to the extent that the millage for the general school fund is in excess of fifteen mills, constitutes a proportioning of the tax to be borne by owners of land of the type and kind embraced by the statute, as distinguished from the tax to be borne by citizens and taxpayers owning other types of real estate, and in holding that said statute does not in this respect constitute an arbitrary, non-uniform and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

F. Holding and deciding that said state statute, which exempts certain citizens and taxpayers from paying taxes upon real estate of the type and kind embraced by said statute and owned by them, provides a proper basis of

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tax exemption on the ground that it is an encouragement and in aid of agriculture or to encourage the reorganization of school districts within the state, and therefore based upon a valid public purpose and public policy which would justify such a classification and non-uniform operation of said statute in granting to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States. On the contrary appellant's position is that said state statute does not aid agriculture in any manner, does no operate to encourage the reorganization of school districts within the state and does not serve any public purpose whatsoever.

G. Holding and deciding that the said state statute which appropriates public moneys raised from statewide general sources of taxation, to the payment, by a "credit" system, of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute, to an extent arbitrarily determined to be the amount that the tax levied for the general school fund exceeds the amount of tax which would be levied on the respective tracts of land if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds and that it does not deprive certain citizens and taxpayers of property without due process of law, and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

H. Holding and deciding that said state statute which appropriates public moneys raised from statewide general sources of taxation, to the payment, by a "credit" system, of individual taxes of certain taxpayers and citizens own-

ing real estate of the type and kind embraced by the statute, without any limit to the amount of such benefit which an individual taxpayer may receive, and which credit is arbitrarily determined to be the amount that the tax levied for the general school fund on each tract of such lands owned by him exceeds the amount of tax which would be levied thereon if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds for a valid primary public purpose and that the classification employed therein does not deprive certain citizens and taxpayers of property without due process of law and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal questions here involved have never been decided by this court.

The statute whose validity is involved herein is a statute of state wide application and has to do only with general school taxes.

The federal questions involved herein are:

1. Is the purpose of the statute public?

2. Are the classifications provided by the statute reasonable and designed to carry out a public purpose?

The classifications are as follows:

a. Agricultural lands (as defined by the statute), separate and apart from other real estate.

b. Agricultural lands separate and apart from other agricultural lands whose use and location is the same simply because of the size of the tracts.

c. Agricultural lands separate and apart from other agricultural lands whose size and use is the same simply because of its location in a school district where the millage exceeds fifteen mills for general school tax purposes.

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3. The validity of the procedure provided under the statute to determine the amount of benefits to be received by each land owner coming under the statute.

The foregoing federal questions have never been decided by this Court.

Assuming without admitting that the federal questions relied upon herein have heretofore been decided by this court, a motion to dismiss or affirm will not be sustained where analysis and exposition are necessary in order to make clear the decisive effect of such prior decisions and there is conflict in the decisions of the various state courts of last resort upon the question, and a division of the Court below.

AUTHORITIES.

American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102.

Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, 429, 56 S. Ct. 513, 80 L. Ed. 772, 777.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 558, 22 S. Ct. 431, 46 L. Ed. 679, 689.

Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

Lawrence v. State Tax Commission, 286 U. S. 276, 52 S. Ct. 556, 76 L. Ed. 1102.

Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36, 47, 54 L. Ed. 921, 926.

Simmons v. Ericson (S. D.) 223 N. W. 342.

ARGUMENT.

Assuming without admitting that the federal questions involved herein have heretofore been decided by this court, appellees' motion to dismiss or affirm should not be sus-

tained for the reason that an analysis and exposition of the statute, the record and the points relied upon by appellant for reversal, are required in order to make clear the effect of such prior decisions if any there are.

Our search discloses only two state decisions involving a statute in any way similar to the one in question, *Keefner v Porter*, 228 Ia. 844, 293 N. W. 501, which involved a similar Iowa statute classifying agricultural land located in independent school districts separate and apart from all other types of real estate for general school taxes. The Iowa Supreme Court held the statute invalid on the ground that the classification contained therein was arbitrary and unreasonable and was not calculated to further any proper public purpose and that the classification did not provide for a basis which would effectually single into a separate class persons or objects with which purpose of legislature is concerned and that there was no reasonable relationship between the purpose of the legislation and basis of classification set out in the statute.

The statute whose validity is now before this Court is the identical statute involved in the *Keefner* case except that the statute classifies agricultural land (as defined by the statute) located in a school district for general school tax purposes, separate and apart from all other real estate.

In *Simmons v. Ericson*, (S. D.) 223 N. W. 342, "agricultural land" for the purpose of the statute involved was defined as all land not platted in city or town lots, used exclusively for farm and agricultural purposes and provided that no agricultural land within an independent school district shall in any year be taxed to exceed ten mills on the dollar of the assessed valuation for school purposes, while other lands or real estate within the district could be taxed twenty-five mills on the dollar.

The plaintiff contended that the limitation of the levy on agricultural land to ten mills on the dollar, while other

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lands or real estate within the district may be taxed twenty-five mills on the dollar, was in violation of that provision of the Constitution, that taxes shall be uniform on all property of the same class.

The court held the classification arbitrary and unreasonable and the statute therefore invalid. At page 454 of the Northwestern citation the Court said:

> "We are unable to see any difference which furnishes a reasonable ground for making a distinction between the rate of taxation for school purposes upon agricultural lands and that upon other real estate within the same school district."

The Constitution of South Dakota was later amended permitting the classification of agricultural land for school purposes separate and apart from other real estate.

That there was a definite division in the Court below cannot be doubted. This is the second time that the statute has been before the Supreme Court of Iowa with some variations in its contents. The statute originally classified agricultural land located in independent school districts for general tax purposes, separate and apart from all other real estate including agricultural land that was not located in an independent school district. The Iowa Supreme Court in the case of *Keefner v. Porter*, Supra, held the statute invalid because of the arbitrary and unreasonable classification contained therein. The statute whose validity is attacked herein is identical with the statute in the *Keefner* case, except that the statute classifies agricultural land, as defined by the statute, located in any school district separate and apart from all other real estate, for general school tax purposes. In a five to three decision, one Justice not sitting, reported in 31 N. W. (2d) 110, held the statute invalid on the ground that the purpose of the statute was private and the classification contained therein was un-

reasonable and not designed to carry out any public purpose. Ten months later in a six to three decision the Iowa Supreme Court withdrew its former opinion and held the statute valid.

What may be regarded as a denial of due process and equal protection of the law is not always as easily determined, as the decisions of this court and the highest Courts of the states show. As said by this Court in the case of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 558:

"No rule can be formulated that will cover every case." Each case must stand or fall on its own merits.

The points relied upon for reversal are set forth and argued in the following propositions in the order in which they appear in the Assignment of Errors.

PROPOSITION A.

The Iowa Supreme Court erred in holding that said statute which classifies agricultural land separate and apart from other lands for purposes of general school taxes, general school tax exemptions and state appropriations in payment of general school taxes on lands, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers, rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

1. The Legislature may classify but a classification may not be arbitrary or unreasonable and must be calculated to further some public purpose, and classification must provide for a basis which will effectually single into a separate class persons or objects with which purpose of Legislature is concerned and there must be a reasonable relationship between purpose of legislation and basis of classification set out in the statute.

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AUTHORITIES.

Appeal of York & Foster, (Pa.) 43 A. (2d) 557.
Bell v. Town of Pulaski, (Tenn.) 184 S. W. (2d) 384.
Cary v. City of Pekin, 88 Ill. 154.
Copeland v. City of St. Joseph (Mo.) 29 S. W. 281.
Corporation of Sevierville v. King, (Tenn.) 184 S. W. (2d) 381.
Essex County Park Commission v. Town of West Orange, (N. J.) 73 A. 512.
Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 165, 17 S. Ct. 255, 41 L. Ed. 666, 668, 672.
Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.
Monaghan v. Lewis (Del.) 59 A. 948.
Opinion of Justices, (Maine) 55 A. 827.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 494, 47 S. Ct. 678, 71 L. Ed. 1165.
Simmons v. Ericson, (S. D.) 223 N. W. 342.
Smith v. City of Americus, (Ga.) 15 S. E. 752.
Truax v. Corrigan, 257 U. S. 312, 333, 42 S. Ct. 124, 66 L. Ed. 254, 263.

2. While the Legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose *the ultimate test of the validity is not whether the classes differ, but whether the differences between them are pertinent to the subject in respect of which the classification is made.*

AUTHORITIES.

Asbury Hospital v. Cass Co., 326 U. S. 207, 214, 66 S. Ct. 61, 65, 90 L. Ed. 6, 13.
Metropolitan Casualty Insurance Co. v. Brownell, 294 U. S. 580, 583, 55 S. Ct. 538, 539, 79 L. Ed. 1070.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 494, 47 S. Ct. 678, 71 L. Ed. 1165.

3. In considering the classification of a law, not only its final purpose must be regarded, but the means of its administration.

Adams v. Milwaukee, 228 U. S. 572, 582, 33 S. Ct. 610, 57 L. Ed. 971, 977.

St. John v. New York, 201 U. S. 633, 26 S. Ct. 554, 50 L. Ed. 896.

4. School taxes are for the benefit of all people. It is a tax for a public purpose.

51 Am. Jur., taxation, Section 9.

Chicago, M. & St. P. Ry. Co. v. Phillips, 111 Ia. 377, 82 N. W. 787, 61 C. J., taxation, Section 3.

1 Cooley, taxation, Fourth Edition, 213-215.

Kelly v. Pittsburgh, 104 U. S. 78, 26 L. Ed. 658, 659, 660.

Morton Salt Co. v. City of South Hutchinson, 159 Fed. (2d) 897.

Thomas v. Gay, 169 U. S. 264, 280, 18 S. Ct. 340, 42 L. Ed. 740, 746.

Wright v. House, 188 Ind. 247, 121 N. E. 433 at 435.

ARGUMENT.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

There are only two states where the Legislature has attempted to classify agricultural lands separate and apart from all other real estate *for general school tax purposes*, namely, the states of South Dakota and Iowa. The South

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Dakota Supreme Court held the classification arbitrary and unreasonable in the case of *Simmons v. Ericson*, 223 N. W. 342, on January 26, 1929 at a time when the state was in the midst of a depression caused by a prolonged drought. The statute defined "agricultural lands" as all lands not platted in city or town lots, used exclusively for farm and agricultural purposes and provided that no agricultural land within an independent school district shall in any year be taxed to exceed ten mills on the dollar of the assessed valuation for school purposes, while other lands or real estate within the district could be taxed twenty-five mills on the dollar. It was contended that the limitation of the levy on agricultural land to ten mills on the dollar, while other lands or real estate within the district may be taxed twenty-five mills on the dollar, is in violation of that provision of the Constitution, that taxes shall be uniform on all property of the same class.

At page 343 of the Northwestern citation the Court said:

> "We are unable to see any difference which furnishes reasonable ground for making a distinction between the rate of taxation for school purposes upon agricultural lands and that upon other real estate within the same school district. There is no more difficulty in discovering the property for assessment in the one case than in the other, or in ascertaining its value for the purpose of assessment in the one case than in the other. It is argued by appellant that the Court must take judicial notice that the relative number of families, and therefore of children, upon agricultural lands within the district is much smaller than that within the municipal area which is divided into blocks and lots. But the number of children that a taxpayer has bears no relation to the amount of tax he may be required to contribute for the support of the schools. Non-residents and persons who have no children may be called upon to contribute in a much larger degree for the support of the school in the community in which they own

property than residents who have large families, many of the children attending school and receiving instructions therein. In this school district the average farm of 160 acres, including all structures and improvements, is assessed at approximately $11,000.00. At the maximum rate of taxation authorized by Chapter 102, Laws of 1923, on agricultural lands, the school tax on such a farm would be $110.00. The owner of a store building and lot of the same valuation within the platted portion of the muncipality could be taxed, for school purposes in the same school district, $275.00. We think the placing of agricultural lands within the school district in a different class than that of other real estate is not based on differences in the character of the property which furnish a reasonable ground for making a distinction between the two classes, and that it really results in permitting agricultural land to escape a burden imposed on other real estate situated in substantially similar circumstances and conditions, and that the limitation of 10 mills on the dollar in the case of agricultural land while the levy on other real estate may be 25 mills on the dollar contravenes that provision of the Constitution that taxes shall be uniform on all property of the same class."

The original Iowa statute classifed, for general school fund tax purposes, agricultural lands located in independent school districts separate and apart from other real estate. The Iowa Supreme Court held the classification to be arbitrary and unreasonable in the case of *Keefner v. Porter*, 228 Ia. 844, 293 N. W. 501. The statute in the *Keefner* case was the same as the statute whose valdity is attacked in this case except that the present statute classifies all agricultural land, as defined by the statute, separate and apart from all other real estate for general school tax purposes.

In the usual case of claimed discrimination the situation arises by reason of the lack of uniformity in valuation.

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Here the situation arises through a statutory attempt to create a special class of property for general school tax purposes and extends a favorable rate thereto. The vice of the situation is in compelling one taxpayer to pay more than a proper proportion of the total school tax as compared with others similarly situated, while at the same time requiring him to contribute to the general tax fund from which all general school taxes of the favored taxpayer, over fifteen mills, are paid. The apparent purpose of the statute is to shift from the owners of agricultural land, as defined by the statute, at least in part, the school tax burden to the public not benefited by the statute and in addition to require the laboring man, the tenant farmer, the office worker and the balance of the public who are excluded, who always bear the burden of all tax exemption, must bear an increased tax burden to accomplish this special non-public purpose, namely, the paying of the general school tax of the favored taxpayer over fifteen mills.

The Iowa Supreme Court attempts to justify the shifting of the tax burden from agricultural lands as defined by the statute to the public and other real estate, on the theory that agricultural land does not receive the same benefits from schools as other real estate and that the statute equalizes, at least in part, by tax exemption, the tax burden for schools to the benefit received. The fallacy of the court's reasoning can readily be seen. A school tax is not laid upon property in order merely to benefit the land by allowing people who live on the property or in the area to go to schools erected and maintained by the school tax. It is laid for a public purpose. The school tax is like that for the support of government. It is for the benefit of all the people. It is a tax for a public purpose. All enjoy the beneficial results of education and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each. The test of equality of

school taxes is not direct benefit of school attendance by pupils who occupy the land taxed. Were that true the childless man would be exempt from the support of schools, and the sane and well from the support of hospitals. There is no irregularity merely because the benefit resulting from the school tax are enjoyed by those who pay it, in different degrees or because some enjoy some particular benefit such as school attendance and others do not. Everyone in the state enjoys the higher social order that flows from the state's educational system. A general tax law such as a school tax law exacts contributions in return for general benefits of a government that establishes a school system. The duty to pay school taxes is found in the participation of general benefits. It cannot be laid or measured by a taxpayer's participation in some special benefit. In the case of *Kelly v. Pittsburgh*, 104 U. S. 78, 83, 26 L. Ed. 658, 660, the distinct ground on which Section 1 of Article 14 was invoked, was that the eighty acres of land of the defendant was and always has been used as farm land for agricultural use only, and cannot for that reason be subjected to taxation for ordinary city purposes. The Court at page 83 of the U. S. citation said:

> "It is urged, however, with much force, that though land of this character, land which its owner has not laid off into town lots, but which he insists on using as agricultural land, through which no streets are run or used, cannot be, even by the Legislature, subjected to the taxes of a city, the water tax, the gas tax, the street tax, and others of similar character. The reason for this is said to be that such taxes are for the benefit of those in a city who own property within the limits of such improvements and use, or might use them if they choose, while the owner of this land reaps no such benefit. Cases are cited from the higher courts of Kentucky and Iowa where this principle is asserted, and where those courts have held that farm lands in a city are not subject to the ordinary city taxes.

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It is no part of our duty to inquire into the grounds on which those courts have so decided. They are questions which arise between the citizens of those States and their own city authorities, and afford no rule for construing the Constitution of the United States. * *

We cannot say judicially that Mr. Kelly received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The waterworks will probably reach him some day, and may be near enough to him now to serve him on some occasion. *The schools may receive his children, and in this regard he can be in no worse condition than those living in the City who have no children, and yet who pay for the support of the schools. Every man in a county, a town, a city, a State, is deeply interested in the education of the children of the community, because his peace and quiet, his happiness and prosperity, are largely dependent upon the intelligence and moral training which it is the object of public schools to supply to the children of his neighbors and associates, if he has none himself."* (Italics Supplied.)

PROPOSITION B.

The Iowa Supreme Court erred in holding and deciding that said statute which classifies agricultural lands solely on the basis of their having been laid off or platted into tracts of ten acres or more, for general school tax, general school tax exemption and state appropriations in payment of general school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A statute which classifies agricultural land for general school tax purposes separate and apart from other agri-

cultural lands whose use and location is the same simply because the size of the tracts is arbitrary and unreasonable and violates Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Brinkerhoff-Farris Trust & Savings Co. v. Hill, 281 U. S. 673, 680, 50 S. Ct. 451, 454, 74 L. Ed. 1107.

Engel v. O'Malley, 219 U. S. 128, 138, 31 S. Ct. 190, 55 L. Ed. 128, 136.

Kelly v. Pittsburgh, 104 U. S. 78, 83, 26 L. Ed. 658, 659.

State ex rel Welsh v. Darling, 216 Ia. 553, 246 N. W. 390, 391.

ARGUMENT.

Appellant is a resident and the owner of a tract of land 4.13 acres in size situated in Epworth School District, Dubuque County, Iowa, and is used solely for agricultural purposes. (Record on appeal to the State Supreme Court, page 18, lines 9 to 23) Appellant's tract is devoted to the same agricultural uses as other agricultural land of ten acres or more located in said school district. (Record on appeal to the State Supreme Court, page 48, lines 23 to 29)

The general school tax for Epworth School District for the year 1946 was 30.899 mills. The appellant's said 4.13 acre tract was valued for tax purposes at $2,322.00. The general tax assessed against said tract for the tax due in the year 1946 was $71.75. Michael Hoffman resides in the same school district, owns a tract of agricultural land consisting of 87.34 acres. This property was valued for tax purposes at $2,483.00. The general school tax against the property for the tax due in the year 1946 was $76.22. (Rec-

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ord on appeal to the State Supreme Court, page 18, lines 24 to 34, and page 19, lines 1 to 16)

Under the statute appellant is required to pay $71.75 in general school taxes on 4.13 acres of agricultural land whereas Hoffman would receive a credit of 15.899 mills or $39.90 and would be required to pay the $36.92 in general school fund taxes on the same kind of property consisting of 87.34 acres.

A reading of the record will disclose that there are thousands of acres of Iowa agricultural land that do not receive any benefits under the statute simply because the land happens to be surveyed off into tracts of less than ten acres.

Thus we see that tracts of agricultural land whose location and use is the same is classified separate and apart from each other simply because of the difference in size of the tracts. *No court in this land has ever upheld a classification of this kind* where as in this case, size is not an index to the admitted evil. As said by this Court in the case of *Engel v. O'Malley*, 219 U. S. 128, 138, 31 S. Ct. 190, 55 L. Ed. 128, 136:

> "Where size is not an index to an admitted evil, the law cannot discriminate between the large and the small."

The cases cited by appellees as authority for this kind of classification are not in point. The basic question of the right to classify for general school taxation placing agricultural tracts of different sizes in different classes, was neither considered or decided and if it had been the state court decisions would not be binding upon this court. As said by this Court in the case of *Kelly v. Pittsburgh*, 104 U. S. 78, 83, 26 L. Ed. 658, 659:

> "It is urged, however, with much force, that though land of this character, land which its owner has not

laid off into town lots, but which he insists on using as agricultural land, through which no streets are run or used, cannot be, even by the Legislature, subjected to the taxes of a city, the water tax, the gas tax, the street tax, and others of similar character. The reason for this is said to be that such taxes are for the benefit of those in a city who own property within the limits of such improvements and who use, or might use them if they choose, while the owner of this land reaps no such benefit. Cases are cited from the higher courts of Kentucky and Iowa where this principle is asserted, and where those courts have held that farm lands in a city are not subject to the ordinary city taxes.

It is no part of our duty to inquire into the grounds on which those courts have so decided. They are questions which arise between the citizens of those States and their own city authorities, and afford no rule for construing the Constitution of the United States."

As said by this Court in the case of *Asbury Hospital v. Cass Co.*, 326 U. S. 207, 214, 66 S. Ct. 61, 65, 90 L. Ed. 6, 13:

> "*The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject in respect of which the classification is made.*" (Italics supplied.)

Applying this test to the classification involved herein can there be any question but what the classification is purely arbitrary and unreasonable? Is the difference in size of two tracts which are located in the same district whose type and character is the same and used for the same purpose, pertinent to the subject in respect of which the classification is made?

We submit that the classification is arbitrary and unreasonable and is not pertinent to the subject in respect of which the classification is made; that the validity of such classification has never been passed upon by this Court; that the classification is in violation of Section 1 of the

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Fourteenth Amendment to the Constitution of the United States and involves a federal question that is substantial in character.

PROPOSITION C.

The Iowa Supreme Court erred in holding and deciding that said state statute which classifies agricultural lands on the basis of their being located in a school district in which the millage for the general school fund exceeds fifteen mills for the purpose of school tax exemption and state appropriations in payment of taxes on such types of property does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The classification of agricultural lands in school districts where the millage rate for school purposes exceeds fifteen mills separate and apart from agricultural land located in school districts where the millage rate is fifteen mills or less and the size, character, type and uses for the same are purely arbitrary and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

The classification is based arbitrarily on the location of the property, namely, whether the property is located within or without a school district where the millage rate for school tax purposes exceeds fifteen mills and whether the landowner receives any benefits under the statute depends entirely upon the millage rate that the district school board fixes.

To our knowledge no legislative body except the Iowa

Legislature has ever enacted a law of state-wide application carrying with it an appropriation raised by state-wide taxation where the power is delegated to the local school district to determine its own benefits under the statute, based upon the estimates of its necessary school tax. The result is a gross disparity and complete lack of uniformity of benefits, an arbitrary and discriminatory incentive for excessive and extravagant school programs to receive private and local benefits with utterly no primary public benefit to the state.

The validity of the classification involved in this proposition has not been passed upon by this Court or the highest Court of any state and is substantial in character.

PROPOSITION D.

The Iowa Supreme Court erred in holding and deciding that said state statute which benefits only citizens and taxpayers owning real estate (1) used for agricultural or horticultural purposes, and (2) laid off or platted into tracts of ten acres or more, and (3) located in a school taxing district in which the millage rate is in excess of fifteen mills, operates equally upon all citizens and taxpayers within the same class, and that said classification does not grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679.

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Cotting v. K. C. Stockyard Co., 183 U. S. 79, 22 S. Ct. 30, 46 L. Ed. 92.

Hayes v. Missouri, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 578.

In re Opinion of Justices, 208 Mass., 616, 94 N. E. 1043.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

ARGUMENT.

This is a law whose application is state-wide and has to do with state funds and not funds that are raised locally. Therefore it should be borne in mind that the class referred to consists of all owners of agricultural land as defined in the statute, situated throughout the state in school districts where the millage for the general school fund tax is fifteen mills or more and further, that each school district where the general school fund tax millage is fifteen mills or more does not constitute a separate class but is a part of the class of owners of agricultural land throughout the state in all districts where said millage is fifteen mills or more. The Iowa Court has stated in the case of *Keefner v. Porter*, 228 Ia. 844, 293 N. W. 501, 503, that property of a class may be exempted from taxation provided always that the classification is a proper one. But it is also well settled that all members of a class shall be included in the taxing act whether for the purpose of imposition of or exemption from taxation and that if the law excludes from its operation a single member of a class, which it would otherwise affect, it will be invalid. This Court has stated the rule pertaining to the Fourteenth Amendment as follows:

> "But upon this general question we have said that the guaranty of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other

persons or other classes in the same place and under like circumstances.'"

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 558, 22 S. Ct. 431, 46 L. Ed. 679, 689.

"'. . . that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances."

Barbier v. Connolly, 113 U. S. 27, 31, 5 S. Ct. 357, 359, 28 L. Ed. 923, 925.

Yick Wo v. Hopkins, 118 U. S. 356, 369, 6 S. Ct. 1064, 1070, 30 L. Ed. 220, 226.

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

Cotting v. Godard (Kansas City Stockyard Co.), 183 U. S. 79, 112, 22 S. Ct. 30, 46 L. Ed. 79, 109.

From a reading of the statute here considered, it is readily discernible, that under these requisites of a tax exemption law the present statute is totally invalid for lack of uniformity in operation even as among members of the favored class itself.

In Iowa the general school fund tax rate of each school district is determined by the local school board. Previous to the passage of this statute, except for certain homestead exemptions, the rate so determined applied equally to all types of real estate within the district. In the enactment of the Agricultural Land Tax Credit Act the Iowa legislature has partially entered this field of local taxation by

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creating a state-wide favored class, to-wit: owners of land of the type and kind favored by the statute. Regardless of the local rate of taxation this favored group pays no more than a fifteen mill tax. There is hence presented the problem of assimilating this favored state class into the hundreds of school districts of the state whose financial structures and tax rates are as many and varied as their number. Assuming for a moment, without admitting, that the classification is valid, the question then presented is whether this dual system of tax rates, one set by the state Legislature for the favored agricultural land-owning school taxpayers, and the other set by the local district for all other school taxpayers, can possibly be said to operate in a constitutionally uniform manner, either as between favored landowners and owners of non-favored realty, or between owners of favored lands themselves.

While the argument may be advanced that the owners of agricultural lands of equal value but located in different school districts having a great disparity in millage rates, actually pay no more than a fifteen mill tax upon their respective properties, the conclusion and fact cannot be escaped that the state in paying the taxes of the favored few is actually helping certain members of the favored class to a far greater extent than it is others equally entitled to its bounty, and that under the statute the proportion to which this disparity may grow is unlimited. As in the *Keefner* Case, Supra, the basis for the disparity of treatment rests solely upon the arbitrary ground of location. The words of the Iowa Supreme Court in that case were never more pertinent, and the situation in this case is unchanged from that set of facts which led the Iowa Court to state at page 504 of the Northwestern citation and we quote:

> "None of us like to pay taxes, but when a neighbor is forced to pay an additional tax, to be used in operating

the school of his neighbor, he is being discriminated against. *Equalization of taxes cannot be brought about, by shifting the tax from the shoulders of one farmer to another, levying different amounts on the same kinds of property.*" (Italics supplied.)

In the *Keefner* case the disparity referred to was between consolidated districts and independent districts with a millage rate under fifteen mills as distinguished from independent districts with a millage rate of fifteen mills or more. In the present case the disparity is between all school districts to a greater or lesser extent dependent upon the millage rate therein.

Any attempt to coordinate local rates of school taxes with the state-wide ceiling school tax rate on favored agricultural landowners shows the mechanical impossibility of achieving any sort of substantial uniformity of taxation. Owners of favored land of identical value are benefited or not by their ceiling tax of fifteen mills by the location of their land in a high or low taxing district. In reality of operation, the agricultural landowner may pay a school tax rate equal to 100% where the local rate is fifteen mills, while another owner of land of identical value and kind pays on a tax rate equal to 25% where the local school tax rate is sixty mills. Yet the requisite of the Fourteenth Amendment is equality of taxation or exemption for all members of the class created.

With the millage rate and the amount of general school fund taxes in each school district being determined locally by each district and not by a state-wide standard, it is as impossible to obtain uniformity and equalization of the burden of taxation to be borne by agricultural real estate as it was under the statute in the *Keefner* case. It can readily be seen that the classification of the agricultural property of the taxing districts has for its basis the location

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of the property. It is not differentiated by its use or by characteristics possessed by it.

Appellant's-plaintiff's Exhibit 2 showing the 1946 General School Fund Tax for certain Iowa counties proves beyond a reasonable doubt that this unchecked disparity between school districts operates to a much greater degree than can be allowed under the most liberal interpretation of the uniformity requirement of the Constitution. The Exhibit, among other things, shows a general school fund levy of 15.075 mills in Eden No. 1 District of Marshall County and millage rates ranging to a high of 50.440 mills in Coppock District of Washington County. The levy in few, if any, of the districts is the same. Therefore the benefits derived by the owners of agricultural land in the various school districts where the millage rate varies would be different. There is no standard in the statute providing for equality or uniformity of treatment of such members of said class outlined by the Legislature. Further the great disparity of benefits resulting from the operation of the statute has no reasonable relation to any purpose that can be attributed to the statute in question.

In considering similar legislation which allowed real estate to be taxed according to the varying local rates while taxing personal property at a set state-wide rate the Massachusetts Court in declaring such legislation unconstitutional, in the case of *In re Opinion of Justices*, 208 Mass. 616, 94 N. E. 1043, 1044 states:

> "The rate upon personal property in any city or town in any year would be different from the rate of taxation upon real estate in that city or town. The taxation upon personalty would be the same throughout the state, and would be determined by the average rate upon real estate assessed for local taxation in the preceding year. This might vary from the average rate of taxation upon real estate for the current year. As the rates of local taxation upon real estate would differ

greatly in different places, the rate in any place might differ widely from the average rate. The result would be that a person having an investment of $10,000 in real estate would be obliged to bear a materially different part of the public burden from one in the same city or town having an investment of the same amount in personal property. We answer the first question in the negative."

The statute in question presents the situation of a state-wide fifteen mill ceiling of taxation upon individuals of the same class but with the rate of taxation being determined locally by each individual school district. From the standpoint of an arbitrary dual tax standard, the situation in the present case is the same as in *In Re Opinion of Justices*, 208 Mass. 616, 94 N. E. 1043, wherein the Massachusetts Court held such legislation unconstitutional. The exemption in the case at bar operates purely on local rates of taxation for purely local use. It has nothing to do with the raising of state funds for total state public use. The local rates of taxation can and do vary greatly above and below the fifteen mill ceiling as has been shown in said Exhibit 2. The benefit to various landowners within the designated class is totally dependent upon local rates and necessarily operates in a non-uniform manner throughout the state.

The only way in which a school district's taxpayers, even though they are owners of "agricultural land", can receive benefits or break even under the operation of the statute is to have the local millage rate above the average rates of all the districts in the state. Tax dollars raised from general tax sources will flow from the districts with lower school taxes to those whose districts require the greatest contribution by the state. The end result can only be a mad scramble in all districts to raise and to continue to raise the millage rates to receive the benefits of said state

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paid taxes and to benefit not by the uniformity of the operation of the statute, but to avoid loss by its intrinsic non-uniformity of operation.

It is apparent that whether the statute is primarily for the benefit of the individual agricultural landowner with a resultant disparity and non-uniformity of operation among said landowners within the benefiting class, or primarily a gift by the state to the districts eligible to receive such benefits, that both of these theories present such shortcomings as prove beyond a reasonable doubt, that the statute in question is an ill conceived and poorly formulated piece of legislation and should not be allowed to stand regardless of the so called "public purposes" attributed to it.

From a reading of the statute it is apparent that the classification involved in this proposition is arbitrary and unreasonable and does not further any public purpose and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States. The federal question involved is substantial in character.

PROPOSITION E.

The Iowa Supreme Court erred in holding and deciding that said state statute which appropriates public moneys, raised from state-wide general sources of taxation, to the payment of general school taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute in certain school districts of the State, to the extent that the millage for the general school fund is in excess of fifteen mills, constitutes a proportioning of the tax to be borne by owners of land of the type and kind embraced by the statute, as distinguished from the tax to be borne by citizens and taxpayers owning other types of real estate, and in holding that said statute does not in this respect constitute an arbitrary, non-uniform and unreasonable

classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Airway Electric Appliance Corp. v. Day, 266 U. S. 71, 45 S. Ct. 12, 69 L. Ed. 169.

Funke v. Lancaster Co., 110 Neb. 635, 194 N. W. 807.

Gast Realty and Investment Co. v. Schneider Granite Co., 240 U. S. 55, 36 S. Ct. 254, 60 L. Ed. 523.

Houck v. Little River Drainage Dist., 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266.

61 C. J. Sec. 388 page 388.

In re Opinion of Justices, 195 Mass. 607, 84 N. E. 499.

Kansas City St. R. Co. v. Road Imp. Dist. No. 6, 256 U. S. 658, 41 S. Ct. 604, 65 L. Ed. 1151.

Louisville Gas & Elec. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770.

Martin v. District of Columbia, 205 U. S. 135, 27 S. Ct. 440, 51 L. Ed. 743.

People v. Klehm, 350 Ill. 419, 183 N. E. 454, 457.

ARGUMENT.

The Iowa Supreme Court in its majority opinion reported in 35 N. W. (2d) 66, at page 72 stated:

> "Further, a classification, as in the act here, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption."

It is submitted that this statement demonstrates the fallacy of the statute under consideration and betrays its lack of

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the quality of uniformity in operation. There is no "proportioning" of the tax within the accepted meaning of that word. "Proportion" means "the relation of one thing to another in respect to size, quantity, magnitude of corresponding parts", or "the relation of one part to another or to the whole with respect to magnitude". *Funke v. Lancaster County*, 194 N. W. 807, 110 Neb. 635. "Proportion", stated the Illinois Court in *People v. Klehm*, 183 N. E. 454, 457, 350 Ill. 419, "is defined as that which falls to one's lot when the whole is divided according to a rule or principle." A proportional tax or tax exemption should bear a direct relation to the total district school tax. Instead of this, in the present case, regardless of the heights to which the school tax may soar, the agricultural landowners' tax remains at a constant and inflexible rate of fifteen mills.

As has been pointed out by plaintiff-appellant's Exhibit 2, this statute embodies on the one hand a fixed and inflexible rate of fifteen mills of general school tax upon the favored landowner class, irrespective of the local tax rate, while all others must pay according to what the local rate in fact is. One member of the favored class may pay a "proportionate" rate of 100% in a fifteen mill taxing district, while another member may pay a "proportionate" rate of 25% in a sixty mill taxing district. Yet the Iowa Supreme Court has held in the foregoing quotation that this "proportioning" augments the constitutionality of the statute, "even though such a classification would be invalid for the purpose of applying a complete exemption."

The foregoing example clearly shows that nothing is further from the fact. A "proportioning" of the agricultural landowner's tax rate to the local tax rate is a mechanical and mathematical impossibility under the operation of this statute. A "proportioning" of the tax burden of the agricultural landowner, so that each member of the favored class itself would bear an equal share of the local tax rate

is impossible of attainment. The operation can in no way be compared to those tax classifications which by varied rates assess certain properties at varying percentages of full value, or which properties are taxed to bear a proportionate or relative share of the total tax burden. There is no standard relation between the "proportion" which one favored landowner's tax bears to his local rate and that of another favored landowner in another school district with a higher or lower rate. Neither is there a standard relation between the "proportion" of tax borne by a favored landowner to the tax borne by an owner of land not benefited by exemption.

A "complete exemption" as referred to by the Iowa Court, and the fifteen mill ceiling exemption to agricultural landowners concerned in the statute have the very element in common which the court construes in the fifteen mill ceiling as augmenting the constitutionality of the present statute. The Iowa Supreme Court has here not only assumed that agricultural lands may possibly be found by the Legislature to receive less benefit from school taxes than other real estate but it has also found by approving this statute that benefit cannot exceed a fifteen mill assessment on the valuation of agricultural property regardless of the development of educational facilities in the area.

In upholding this phase of the statute the Iowa Supreme Court cited cases and statutes regarding classification of agricultural lands separate from other types of real estate, placing particular reliance upon Minnesota statutes. But not one of these cases involves a ceiling exemption on general school fund taxes. These statutes and the cases construing them had to do with proportionate levies in the true sense. No proportion exists among taxpayers' rates of taxation when within the same district unbenefited taxpayers must pay more or less as the needs of the district

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rise and fall while the tax upon a select group of property owners remains constant.

The statement of Mr. Justice Holmes in the case of *Gast Realty and Investment Co. v. Schneider Granite Co.*, 240 U. S. 55, 36 S. Ct. 254, 60 L. Ed. 523, in condemning an assessment ordinance with a mechanically faulty base is peculiarly applicable to the type of legislation here under consideration. Mr. Justice Holmes states at page 59 of the U. S. Citation:

> "The differences were not based upon any consideration of difference in the benefits conferred, but were established mechanically in obedience to the criteria that the charter directed to be applied. The defendants' case is not an incidental result of a rule that, as a whole and on the average, may be expected to work well, but of an ordinance that is a farrago of irrational irregularities throughout. It is enough to say that the ordinance following the orders of the charter is bad upon its face as distributing a local tax in grossly unequal proportions, not because of special considerations applicable to the parcels taxed, but in blind obedience to a rule that requires the result. And it cannot be said that the ordinance as a whole may be regarded as an individual exception under a rule that promises justice in all ordinary cases."

In the *Gast* case, Supra, at page 59 of the U. S. citation, Mr. Justice Holmes states the rule of uniformity of operation within the class as follows:

> "But—if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that parties will be taxed disproportionately to each other, and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact." Citing *Houck v. Little River Drainage Dist.* 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266; and *Martin v. District of Columbia*, 205 U. S. 135, 27 S. Ct. 440, 51 L. Ed. 743.

In condemning legislation taxing foreign corporations on a basis of a number of certain shares of stock, as the sole determinant of the annual fee, this court stated in the case of *Airway Appliance Corp. v. Day*, 266 U. S. 71, 85, 45 S. Ct. 22, 69 L. Ed. 169, 177, 178:

> "Such a classification is not based on anything having relation to the purpose for which it is made. * * * The act has no tendency to produce equality; and it is of such a character that there is no reasonable presumption that substantial equality will result from its application * * * The act violates the equal protection clause of the 14th Amendment."

In the case of *Kansas City S. R. Co. v. Road Imp. Dist. No. 6*, 256 U. S. 658, 41 S. Ct. 604, 65 L. Ed. 1151, this Court in following the rule of the *Gast* Case, Supra, condemned the arbitrary assessment of railroad property in a manner different from other local realty, where the purpose of the tax was local improvement. At page 661 of the U. S. citation this Court stated:

> "Railroad property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all."

The constitutional shortcoming of the ceiling exemption in taxation and the inherent arbitrary nature of such taxation has been the subject of able discussion:

> "Even where the right to exempt exists, the constitutional requirement of uniformity is violated if the exemption does not serve a public purpose, or if it is merely a partial exemption conditional upon the property exempted paying an arbitrary percentage which is not proportional." 61 C. J. Sec. 388, page 388.

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In the case of *In re Opinion of the Justices*, 84 N. E. 499, 195 Mass. 607, the Massachusetts Senate requested an advisory opinion upon a tax exemption act which was as follows:

> "To exempt from all other taxation, state and local, the classes of intangible personal property hereinafter enumerated and to impose thereon either as a property tax, duty, or excise, a uniform tax at the rate of 3 mills in each dollar of the cash valuation thereof: viz
>
> 1. Money on hand, on deposit, or at interest, and other debts due the taxpayer;
>
> 2. Public bonds or securities;
>
> 3. The bonds of domestic and foreign corporations;
>
> 4. The shares in the capital stock of foreign corporations now taxable under the provisions of Chapter 12 of the Revised Laws."

The Massachusetts Court in its opinion discussed the Massachusetts constitutional empowerment of the state to "impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of and persons resident and estates lying within the said commonwealth.

While such a "proportionate" limitation is not involved under the Iowa Constitution, the consideration of that requirement, as here bearing on the substantial federal question of uniformity, is pertinent and enlightening. At page 501 of the Northeastern citation that Court said:

> "The general purpose of the constitutional provision above quoted is to put the burdens of government equally upon all the people, in proportion to their ability to bear them. The Legislature has always had this in view. It is obviously impossible to devise any system of taxation that will be absolutely proportional in its operation upon individuals. The best that the Legislature can do is to approximate closely to the re-

sult desired, and to avoid every method which has a direct tendency to produce unreasonable or disproportional taxation."

It is earnestly submitted that a general school fund tax or general school fund tax exemption cannot be uniform in operation which does not provide that all should pay the proportional tax which the Legislature has found their classification should bear. That tax cannot be uniform which allows one select group to pay at a standard and arbitrary rate while all other groups must pay according to the rate found to be necessary in raising the general funds. The ceiling tax rate upon agricultural landowners without a limit on other property owners is more than a legislative finding that the former group receives less benefit. It is an arbitrary finding that the benefit of educational taxes to agricultural landowners cannot exceed an arbitrary figure. Even if it is conceded that agricultural landowners receive less benefit from school taxes, the benefit they receive must bear some relation to the benefits received by non-agricultural landowners. There is no such relation contemplated in the present case. There is no more relation between the fifteen mill ceiling regardless of the actual district tax than there would be if the agricultural landowner were to be completely exempted. To approve such a method of taxation is to remove the bulwark of uniform operation from the protection of the taxpaying public. If the Legislature can exempt to any degree a minority group from the payment of a general tax in tax legislation which bears no relation to the total tax to be assessed or to the benefits derived thereunder, it can exempt totally, and to degrees which cannot possibly be said to be in the public interest and in violation of all requisites of uniformity. Surely to this degree the term "uniformity" requires a tax proportional to the total cost to be borne by the district.

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The classification is arbitrary and unreasonable and not in furtherance of any public purpose.

The federal question involved in this proposition is substantial in character.

PROPOSITION F.

The Iowa Supreme Court erred in holding and deciding that said state statute, which exempts certain citizens and taxpayers from paying general school taxes upon real estate of the type and kind embraced by said statute, provides a proper basis of tax exemption on the ground that it is an encouragement and in aid of agriculture or to encourage the reorganization of school districts within the state, and therefore based upon a valid public purpose and public policy which would justify such a classification and non-uniform operation of said statute in granting to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers in contravention to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

1. **The purpose of the statute is private.**

AUTHORITIES.

Cooley on Taxation, Fourth Edition, Section 179 and 182.

Dodge v. Mission Township, 107 Fed. 827.

Hanson v. Vernon, 27 Ia. 32.

In re Opinion of the Judges (S. D. 1932) 240 N. W. 600.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

Laughlin v. City of Portland, 111 Maine 486, 90 Atl. 318.

Love v. City of Des Moines, 210 Ia. 90, 230 N. W. 373.

Lowell v. Boston, 111 Mass. 454.

Savings and Loan Assn. v. Topeka, 20 Wall. 655, 22 L. Ed. 455.

St. Louis & S. F. R. R. Co. v. Delk, 158 Fed. 931.

Stanley v. Jeffries, (Mont.) 284 Pac. 134.

State v. Dawson, (Wisc.) 280 N. W. 698, 709.

State v. Williams, 43 Nev. 290, 185 Pac. 459.

Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55, 79, 57 S. Ct. 364, 81 L. Ed. 510, 523.

U. S. v. Dexter, (Ia.) 154 Fed. 890.

William Deering & Co. v. Peterson, 75 Minn. 118, 77 N. W. 568.

2. **The statute does not encourage or aid agriculture.**

3. **The statute does not aid education or encourage the reorganization of schools.**

ARGUMENT.

The statute provides for the assessment and levy of general school taxes in the future, the same as in the past, and provides in effect, that the state shall pay the general school tax levied above fifteen mills on certain agricultural land located in certain school districts thereby shifting the burden of paying their general school tax from the favored landowners to the general taxpayers of the state. The statute does not in any way encourage or aid agriculture.

Agriculture is defined in Volume 3, Words and Phrases, Perm. Ed. 46, as the art of science of cultivating the ground, including the planting of seed, harvesting of crops, and the raising, feeding and management of livestock and poultry. When we speak of a law in aid or improvement of agriculture we mean a law for the betterment of this science or art of cultivation and livestock raising; a law that benefits

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the so called basic industry, as an industry. According to the record (Appellant-plaintiff's Exhibit "4"), the statute would have effect in less than one-half of the school districts in the state. How is the agricultural industry, as an industry, improved by a law that grants public funds in the form of a tax exemption in aid of some owners of agricultural land and not to others? This kind of relief from a general school tax burden is certainly not the kind of aid to agriculture that is part of the public policy of the State of Iowa. The aid to agriculture that is part of the public policy of Iowa means something that is designed to aid the productive capacity of those engaged in the industry. It does not mean mere income betterment by direct grant of public funds to owners of certain agricultural lands, in the form of a tax exemption from the payment of a general tax. A reading of the statute will disclose that it has nothing to do with aiding or encouraging agriculture. In the first place the majority of the people in Iowa engaged in the farming industry are not owners of farm real estate but are tenant farmers. A recent report compiled by the Iowa State Secretary of Agriculture shows that 51% of the persons engaged in the farming industry in Iowa are tenant farmers. In what way can they benefit from a statute that provides for the payment of certain agricultural landowners' taxes? In what way do the owners of thousands of acres of Iowa agricultural land whose land happens to be surveyed into tracts of ten acres or less, benefit from the statute? In what way is the farming industry aided or encouraged by a statute which provides that those agricultural landowners living in a school district which spends the most shall receive the most benefits?

Any incidental benefit accruing to the general public by reason of income betterment of certain agricultural landowners is entirely offset by the increased tax burden the public must pay in order to give certain agricultural

landowners the tax exemption that results in their increased income.

The cases cited by appellees in their brief and argument upholding statutes designed to aid the agricultural industry are not in point. The statutes that are involved in the cases cited are designed to aid or better the science or industry of agriculture and do not provide for a tax exemption from a general school tax for a certain favored group of owners of agricultural land, such as the statute involved in the case at bar.

A simple reading of the statute shows that the statute does not in any way aid education or the reorganization of school districts. The school districts receive no increase in funds by reason of the appropriation involved in the statute. They will receive no decrease in funds if the law is held unconstitutional.

It must be borne in mind that this statute is not an emergency relief measure. It appropriates five million dollars annually. It establishes a permanent policy.

As stated by the Court in the case of *Smithberger v. Banning*, (Nebr.) 262 N. W. 492, 501, the taxing of all the people of the entire state, and expending the proceeds only in certain school districts is not a public purpose. Classification must reasonably be adopted to secure a legitimate public interest.

Indirect and incidental benefits which may result to the public do not constitute a public purpose where the direct object is private. The appropriation here made as stated in the title to the act is an appropriation to pay the "tax credits" allowed by the act and is in no sense an appropriation made for the benefit of agriculture as an industry or in aid of education or the reorganization of school districts, the purpose of the statute is clearly private and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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The federal question involved in this proposition is clearly substantial in character.

PROPOSITION G.

The Iowa Supreme Court erred in holding and deciding that the said state statute which appropriates public moneys raised from state-wide general sources of taxation, to the payment, by a "credit" system, of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute, to an extent arbitrarily determined to be the amount that the tax levied for the general school fund exceeds the amount of tax which would be levied on the respective tracts of land if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds and that it does not deprive certain citizens and taxpayers of property without due process of law, and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Blaine County Inv. Co. v. Gallet, (Idaho) 204 Pac. 1066, 1067.

Goodlove v. Logan, 217 Ia. 98, 251 N. W. 39.

Peabody v. Russell, 302 Ill. 111, 134 N. E. 150, 20 A. L. R. 972.

People v. Brady, 277 Ill. 124, 115 N. E. 204.

Smithberger v. Banning, 129 Nebr. 651, 262 N. W. 492, 100 A. L. R. 686.

State v. Fowler, 94 Fla. 752, 114 So. 435.

State ex rel Davis v. Eggers, (Nev.) 91 Pac. 819, 824.

Wilson v. School Dist., (Pa.) 195 A. 90, 113 A. L. R. 1401.

Winter v. Barrett, 352 Ill. 441, 186 N. E. 113, 89 A. L. R. 1398.

Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 at 225.

ARGUMENT.

The statute is unconstitutional and void for the reason that the same is in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the means by which the Legislature has provided for the determination of which districts shall receive the benefits of the appropriation of funds raised by taxation of the general public, and the lack of legislative control under the statute as to the amount which each district may command to its disposal, by the sole use of its estimate and judgment as to the sum of money needed for the general school fund as the criterion for the amount of land tax credit to be received by the landowners under the statute, is an unconstitutional delegation to the school board of the district of the legislative power of determining the extent and allocation of said tax money.

An attack such as is here made upon the delegation of the legislative power to appropriate state funds under the statute in question can only be met by the argument that the discretion of fixing the local tax rate of the individual district by the school board is, as to state appropriations, only the exercise of a ministerial and not a legislative power by the board.

But the duly elected representatives of a local subdivision of a state are not the duly elected representatives of the people of an entire state. And such local representatives cannot have the power to control the amount and allocation of the public moneys of an entire state. Hence, the only question before the Iowa Court as to this aspect of

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the case is to determine whether or not the fixation of the benefit and the extent thereof, to be received by a local district, by its local officers of general funds raised from the public of an entire state, is a legislative or a ministerial function.

The argument is anticipated that such a delegation of power to local authorities to determine its own eligibility for benefit from state funds is not without standards prescribed by the Legislature, and that such delegation is hence a lawful direction of ministerial duties performed under legislatively created standards and is not a relinquishment by the General Assembly of legislative power. Any merit to this contention can only be advanced to the phase of the statute defining the landowners, or lands entitled to coverage thereunder. This is admittedly fairly definite and complete and perhaps adequately directs the county officers in determining which landowners shall be entitled to exemption, and to a consequent gift in the payment of his taxes. But as this Court knows, and as the authorities decisively show, *the test of propriety of "delegation" legislation is the completeness of such statutes as to all the standards by which the activity of the delegatee body shall be governed in a given situation.* As has been previously noted, the only limit upon the amount of tax, and hence the related amount of benefit a local rural district can claim for itself and for the agricultural landowners therein is the tax limit per student imposed by another section of the Code entirely unrelated and unmentioned by the statute itself. *Thus, the phase of the statute relating to the setting of the amount of school expense for the district, and hence, the school tax which shall be levied upon its landowners is left, except as to that upper limit of tax per student, entirely to the discretion of the local taxing district.* The local millage rate is totally dependent upon local discretion. While this legislative tax discretion may not be

onerous when only local moneys and local taxpayers are concerned, *it is onerous and in contravention of the Fourteenth Amendment when that local discretion is allowed to operate upon state tax funds raised from state-wide general taxes and paid by taxpayers of the state who owe and are under no public obligation to pay the taxes of a foreign locality, unless their Legislature so directs for a valid public purpose.* It is onerous when local discretion can dictate the disposition of such state funds and can effect their allocation without a legislative decree as to such allocation and a legislative setting of the amount so to be allocated.

The general taxpayers of the State are constitutionally entitled to have their Legislature direct where such money shall be spent. The general taxpayers of the State are Constitutionally protected from an unlawful act which in its "appropriation feature" lays out a gift of $500,000, then $2,000,000 and now $5,000,000, and allows any or all, or some or none, of the school districts as the districts themselves choose, to partake at will and in any amount or proportion they desire until the public bounty is exhausted. The general taxpayers of the State are entitled to have each State appropriation to any locality in the State subject to the combined consideration and wisdom of their duly elected Legislators. *Certainly the general taxpayers of the state and the non-benefiting landowners in the locality are entitled to more than a lethargic legislative assumption that the local school board officers will make a reasonable estimate, and that they possibly may not cause the local tax to be hiked to allow the district and benefited landowners to climb upon the gravy train of uncontrolled state aid.*

Whether such local state aid to a class which is not destitute, or infirm, or without means of support, could constitutionally be accomplished by the Legislature's appropriating funds in designated amounts to certain districts after a consideration of which district it deemed in the general

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public interest to aid need not here be considered. Neither need it be contemplated whether or not a gift to all school districts in designated and equal amounts would meet the constitutional requisites of uniformity and legislative exercise of its vested power of appropriation of State funds. *The statute itself shows that no particular district or districts are considered as objects of legislative bounty and that no legislative consideration has been or can be given to which if any agricultural land-owners are paying an excessive tax, and what, if any, state aid should properly be granted to any district.* All this determination as to disposition of state funds raised by state-wide general taxation is decided by each individual school board or taxing district. Whether a great or a small amount of the total appropriation is received locally, its amount and allocation is neither the result of a legislative directive nor the result of the operation of the statute by the local board's following any requisites and standards set forth by the Legislature as to how much benefit it and its agricultural landowners may receive.

That this local discretion as to millage rate cannot be made the basis of determination of what, if any, share of a total state appropriation shall be received locally and that the Fourteenth Amendment of the Federal Constitution is amply sustained by the authorities.

The rule as to delegation of legislative power is as stated by this Court in the case of *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 at page 225 of the L. Ed citation:

> "There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold

consent, not only as to places, but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint."

In the case of *State ex rel Davis v. Eggers* (Nev.) 91 Pac. 819 at page 824 the Nevada Court states as follows:

"As all appropriations must be within the legislative will, it is essential to have the amount of the appropriation, or the maximum sum from which the expenses could be paid, stated. This legislative power cannot be delegated nor left to the recipient to command from the state treasury sums to any unlimited amount for which he might file claims."

The rule as to delegation of legislative power immediately brings to mind the case of *Goodlove v. Logan*, 217 Ia. 98, 251 N. W. 39, in which the Court stated at page 40 of the Northwestern citation, that the question before it was:

"Whether or not the Legislature of the State of Iowa had a right to confer upon the highway commission the power and authority to pass and establish rules and regulations. * * *"

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At page 43 of the Northwestern citation the Court said:

"• • • If the Legislature can delegate to the highway commission the right to do these things, then, of course, the Legislature can delegate the same power to the board of control, superintendent of banking, and all other administrative departments of the state may likewise be empowered to enact rules and regulations to be given the force of statute, which said commission might in their judgment determine to be for the general protection of the public. Once this bureaucracy has fastened itself into the life of legislative power, little else need be done by the Legislature than to meet and create boards. The Legislature has no such right to delegate to the highway commission legislative power to pass rules and regulations concerning the use of the primary highways of this state by the people of this state, such Rule VII. If the Legislature in its wise judgment desires to pass such a statute, it, of course, has the right and authority to do so, for the Legislature is composed of the representatives of the people; it is chosen by the people for the purpose of making the laws of this state. The Legislature cannot transfer the power of making laws to any one else, or place the right to make laws anywhere but where the people have placed it. • • •"

In holding such delegation unconstitutional as "legislative" the Court quotes with approval from the case of *State v. Fowler*, 94 Fla. 752, 114 So. 435, 437:

"It may be stated that the paramount test as to whether or not a particular statute amounts to an invalid delegation of legislative power is the degree of completeness of the statute as it appears when it leaves the hands of the legislative body. This law must be so complete in all its terms that nothing is left to the judgment of the delegate or appointee of the Legislature, and, where a statute passed by the Legislature is not complete as legislation, but authorizes an executive board or some other named authority to decide what should and what should not be deemed infringement of the

law, it must be held unconstitutional as attempting to make an improper delegation of legislative power."

In the case of *Winter v. Barrett*, 352, Ill. 441, 186 N. E. 113, the Supreme Court of Illinois found it necessary to condemn appropriation legislation because it found that the statute attempted to give to the "emergency relief commission" the power to determine what portion if any of a fund allotted to any particular county over 500,000 in population should be allocated to relief and what portion should be allocated to "education purposes"; and in any county having a population under 500,000 the power was attempted to be given to the county board to determine what portion, if any, of the fund should be allotted to the superintendent of schools for "educational purposes" and what portion should be expended for "relief purposes." The Court at page 127 of the Northeastern citation states:

"• • • It is apparent that the Legislature has not in either of these appropriations appropriated a distinct and separate amount for each of these two purposes, but has appropriated for both or either of the two purposes in one amount. This is in violation of the constitutional requirement that bills making appropriations must specify the objects and purposes for which the appropriations are made *and appropriate to such objects and purposes their several amounts in distinct items and sections.*" (Italics Supplied)

The Court at page 128 of the Northeastern citation further stated:

"• • • These provisions of section 4 are unconstitutional and void, because no money may be drawn from the state treasury except in pursuance of an appropriation made by law, *and no appropriation may be made subject to the discretion of any person or board or commission as to the purpose or object for which it may be used.*" (Italics Supplied)

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As in the present case, the discretion of a board was intended to supply the variable omitted by the Legislature as to the amount of state funds to be received for "educational purposes." *And where that discretion was not tempered with a complete set of standards and guides for computation of that amount, the court was constitutionally bound to condemn the appropriation.*

The function of determining the amount of a tax when no standards exist controlling the computation thereof is clearly "legislative." The school board which performs this function does so as a creature of the Legislature, a quasi-corporate body, endowed with such power by the Legislature. The propriety of such determination for the purpose of fixing local taxes is not directly questioned. The objectionable feature of the statute in question is that the exercise of this discretion is made the basis or controlling state and not local funds. Beyond the appropriation to the general fund, the Legislature cannot under the statute control the disposition of that fund. It is controlled by the school board themselves. There is no standard provided by which the school boards may be guided or controlled in commanding only a certain amount, or proportional amount, or an amount equal to other school districts' benefits. The single limit of a maximum tax per student leaves the board with a tremendous range of discretion as to the control of a slice of unknown size of the total appropriation.

When confronted by a situation similar to the present case in which the Legislature had appropriated $4,000,000 for "work, relief, direct relief, old age assistance, assistance to dependent mothers and children, public health or related matters of security and welfare, and public works, especially roads by the use of work relief labor," to be expended by a legislatively created "state assistance committee" in contemplation of a Federal Relief Program, the Nebraska Supreme Court in the case of *Smithberger v. Banning*, 129

Neb. 651, 262 N. W. 492, found that this power or discretion in the committee was the delegation of a legislative power of appropriation and hence was in contravention of the Fourteenth Amendment. The Court at page 495 of the Northwestern citation stated:

> "• • • There is no provision in any of the bills mentioned that fixes any standards for the guidance of the state assistance committee or the board of educational lands and funds. The committee and board above mentioned have an arbitrary and unrestricted discretion to allocate the $4,000,000 to any of the purposes set forth in the acts under consideration, with the single exception that old age pensions are to be given a preference. Under these acts, the board and committee have the power, if they see fit to do so, to allocate the whole fund to the payment of old age pensions and unemployment insurance *without the requirement of the making of any findings of fact under standards and tests provided for in the act.* Such provisions amount to a delegation of legislative power. Under Section 1, art. 2, and Section 1, art. 3, of the Nebraska Constitution, the legislative power of the state is vested in the Legislature and cannot be lawfully delegated to any board or committee. *Such provisions deny the equal protection of the law and violate the due process provisions of the Fourteenth Amendment to the Federal Constitution.*" (Italics Supplied)

It is apparent that the Legislature in the present statute has gone beyond constitutional bounds. There is no standard to which the school district need conform to meet the requirements of the statute. The Legislature cannot control any district's inclination to abuse this privilege. Moreover, in school districts where the voting majority is made up of agricultural landowners, there is little likelihood that such abuse will be received with displeasure by the district electorate. This is the situation which the Legislature has intentionally or inadvertently created to the jeopardy of

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(1) the general taxpayers of the State, and (2) the taxpaying owners of non-benefiting agricultural and urban lands in the district in which such abuse is effected. This statute is in contravention of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal question involved in this proposition is substantial in character.

PROPOSITION H.

The Iowa Supreme Court erred in holding and deciding that said state statute which appropriates public moneys raised from state-wide general sources of taxation, to the payment, by a "credit" system, of individual taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by the statute, without any limit to the amount of such benefit which an individual taxpayer may receive, and which credit is arbitrarily determined to be the amount that the tax levied for the general school fund on each tract of such lands owned by him exceeds the amount of tax which would be levied thereon if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds for a valid primary public purpose and that the classification employed therein does not deprive certain citizens and taxpayers of property without due process of law and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446.
Peabody v. Russell, 302 Ill. 111, 134 N. E. 150.
Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570.
Smithberger v. Banning, (Nebr.) 262 N. W. 492.
Winter v. Barrett, 352, Ill. 441, 186 N. E. 113.
Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

ARGUMENT.

The non-uniformity of operation of the statute and its lack of a public purpose is further increased by the fact that there is no appropriation by the Legislature to any particular needy school district, or any provision limiting the amount of financial benefit which any one district may receive. Rather, the school board of the individual district has been granted under the statute the sole power to dictate to the Legislature the amount of benefit the landowners of the district shall receive. The only curb upon the outgoing or treasury end of this legislatively created pork barrel is that the apportionment of public funds to all the school districts receiving land tax credits cannot exceed the total amount of money appropriated. And the subsequent amendatory acts of the Legislature to increase this fund show that no limit is in sight to the size to which it may grow. Beyond the knowledge of the total amount of the appropriation and the approximate amount of "agricultural lands" to be created under the statute, the Legislature neither knows where, nor is able to control the amount or the allocation of the funds to the various districts.

That such a method of appropriation of state funds by the Legislature, in effect allowing the district itself to determine how much public aid it shall receive, must needs result in a non-uniform operation is amply evident from a contrast between the means of apportioning the appropriation to school districts employed under this statute and that method provided by the Legislature in the case of *Winter v. Barrett*, 352 Ill. 441, 186 N. E. 113. Although constitutionally condemned for the reason that local legislative discretion was entailed in apportioning the amount received, by the district, the legislation there concerned provided for a system of disbursement to the *various districts of the total appropriation* which left to the bodies administering the "allocation feature" of the statute only ministerial duties. That system of disbursement was based totally upon a mathematical calculation using the last United States census figures as to district population. Such calculation was obviously mechanical and ministerial and *further, would mathematically tend toward a uniform and proportional allocation of the total appropriation throughout the state. No local discretion factor entered into the computation, and no "legislative" function was entailed.*

In discussing those cases in which no such mechanical computation according to legislatively set standards was involved, and where the provision for allocation was based solely upon an administrative officer's performing a "legislative function" the Illinois Court in condemning an appropriation act to be administratively allocated through state branches of government in the case of *Peabody v. Russell*, 302 Ill. 111, 134 N. E. 150, at page 154 of the Northeastern citation stated as follows:

> *"In our judgment, if this appropriation for the benefit of either one, two, or three departments of the state government, without specifying the definite purpose or object of the appropriation can be sustained, then such*

*appropriations for every branch of the state government, just as indefinite must be sustained, and we see no legal reason why, if $500,000 could be thus appropriated, even larger sums might not be appropriated to various state departments in the same indefinite and uncertain manner. * * *"* (Italics supplied.)

It is not questioned that the Legislature may, and perhaps should, appropriate public moneys in aid of school districts which have adequate facilities or, because of local problems have inordinately high expenses. *But surely the Legislature cannot grant to the individual school district the power to determine whether it shall and to what extent it is to receive a state appropriation.* The power to appropriate is vested solely in the Legislature, and the means of granting such aid must conform to the legal procedure provided by the constitution for such appropriations. *To allow such a delegation of power by the Legislature is to place the landowners of that school district which attempts to run its school affairs in a sane and economical manner at the complete mercy of those school districts which choose to exploit the "appropriation feature" of the statute to the fullest extent allowed by law. The tax dollars such a district provides to the general fund by general taxation will flow to high expense districts, not by legislative decree, but by the direction of the school board which has raised its estimate or has already a high rate of school expense. There is no curb for equal expenditures upon school districts which have identical problems.* The Legislature and the general public are laid wide open to such onslaughts as the exploiting school district chooses to make. *The Legislature under the statute has divested itself of the power to govern where such appropriation shall be allocated, and any protection of the public as to the wisdom of the expenditure of its funds in a uniform and proper manner has been sacri-*

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ficed and left to the individual judgment of the board of each individual school district.

To allow the district itself to determine its individual need of state funds raised from general and state-wide sources based (1) on the number of agricultural lands qualifying under the statute and (2) the expense the district may arbitrarily decide the coming year will entail, is to foment class legislation and arbitrary discrimination of the most local and vicious sort. The district and not the Legislature determines the class of burden to be borne or benefit to be received from the appropriated funds. The district and not the Legislature determines the amount of public money which shall be appropriated to its local needs. The district and not the Legislature determines that the public welfare of the state will be served by the expenditures it makes of public moneys in its own locality. *Surely it cannot be contended that the end result of such a means of determining the disposition of state funds will have as its end result just and uniform operation and a publicly beneficial purpose.*

The arbitrary nature and the resultant non-uniform operation of the statute cannot be justified or explained by either theory of the "appropriation feature" of this statute. Whether it is said that the agricultural landowner receives the direct benefit of the appropriation to the district, or whether the appropriation is called a bookkeeping trick transferring public moneys from one state "pocket" into another, the appropriation does not and cannot operate in a uniform or substantially uniform manner upon all the school districts of the state, nor does it operate upon those districts which the Legislature has decided it is in the public interest to aid. It does not operate equally upon agricultural landowners throughout the state although they are covered by the statute, *nor does it help any particular agricultural landowners* which the legislature has decided it

is in the public interest to aid, *even if such an arbitrary selection were constitutionally permissible.* Nor, if the entire public interest requires that certain districts be aided to a greater extent than other districts, is the public allowed to have its Legislature determine which districts shall receive the benefit of state aid. The local school board determines the extent of its need and the amount of the state appropriation it shall command. *It is one thing for the school board to determine what the rate of local school taxes shall be. It is another for the school board to dictate its share of a public fund to be used for local purposes, and to declare that because the millage rate required for school purposes is over fifteen mills and there are agricultural landowners in the district it is in the public interest of the state and for a state public purpose to allot to that district a part of an appropriation of funds raised by general taxation.*

To say nothing of the plight of a taxpayer who receives no benefit under the statute because she does not own agricultural land of the type and kind concerned by the statute, but resides in a district where the school board has hiked the estimate of required school expenditures to receive state appropriations in the form of "Land Tax Credits", and whose taxes skyrocket with the estimate, the result of a private benefit to the agricultural landowners therein is inevitable, and the secondary benefit, if any, to the general public of the state by increased educational facilities in that arbitrarily and non-legislatively designated district would rest on chance and happenstance. *But under this statute, the public purpose rests distinctly upon a fictitious legislative finding that the public will benefit by a gratuity to an individual or to a school district to which no public obligation runs, or that the public will generally benefit by an appropriation gratuity to a locality which selects itself as the proper beneficiary.* It would be supposed that the

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Legislature should have in mind which, if any, local districts should receive the public bounty for the purpose of ascertaining the need and existence of a public purpose and public benefit to the State in granting local aid. But the Legislature does not know, and cannot know, which, if any, or all localities will receive the benefit of public gratuity until the requisition for public funds on the basis of "Land Tax Credits" and the tax figure estimated by the school board are set. The school board and not the Legislature will have determined that it was in the public interest that money be allocated to a prescribed extent to aid in that particular district. *Uniformity under such a haphazard and foresighted method of local appropriation, and the service of a public interest and purpose is impossible.*

This aspect of non-uniformity of operation also presents the distinguishing characteristic between this statute and such legislation as the Homestead Act or veterans' home benefit or pension legislation. Under the latter type of statute the Legislature has clearly provided by definition and outline what exactly is a homestead, or what constitutes a veteran eligible to receive benefits. It has specifically limited the amount of exemption to each person claiming benefit thereunder, in the Homestead Act, both in size of the tract and in value, and in the case of Pensions the limit and manner of computation thereof based upon uniform standards.

Under the statute presently considered, the Legislature has only defined what is "Agricultural land." It has prescribed no limit to any individual landowner, nor has it placed any limitation upon his resident status. There is no limit upon the size of the tract of land upon which he may claim the exemption and gratuity, nor as to the amount of personal exemption from tax he may claim. The Homesteader and veteran must be locally present and meet other personal requisites to receive a limited personal bene-

fit of exemption. The agricultural landowner need not be a local resident, or hold any other local status to receive not only the exemption, but the actual gratuity of a land tax credit to the unlimited extent of his agricultural landholdings.

Further, the homestead exemption to agricultural or urban land is uniform throughout the State. Whether a man's homestead borders on the Missouri or the Mississippi he receives equal benefit under the law. The veteran receives no greater pension or exemption than his former comrade in arms who saw the same service though one resides in Council Bluffs while the other resides in Davenport. But under the present statute the amount of exemption and amount of gratuity rests arbitrarily upon local necessity or school board whim. *The landowner in one district may receive a one mill exemption and gratuity on a sixteen mill school tax, while his neighbor across the road may receive a thirty-five mill exemption and gratuity on a fifty mill school tax.* The comparison of non-uniformity and uniformity between the above named types of legislation speak for themselves and the unconstitutional failure of the statute under consideration to conform to constitutional requisites and discriminatory benefits based solely upon locality, need no further elaboration.

Because of the unlawful delegation by the Legislature to the local school district of the power to determine the amount of benefits it receives under the statute, if any, the statute does not operate uniformly on members of a class and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal question involved in this proposition is substantial in character.

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CONCLUSION.

It is respectfully submitted that the questions presented by the appeal in the case at bar are meritorious and of a substantial nature warranting a review by the Supreme Court of the United States of the decision of the Supreme Court of the State of Iowa, which upheld the Iowa Statute involved herein against timely challenges as to its constitutionality under the Fourteenth Amendment to the Constitution of the United States, and the appellees' motion to dismiss or affirm should be denied.

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FILED
JUL 6 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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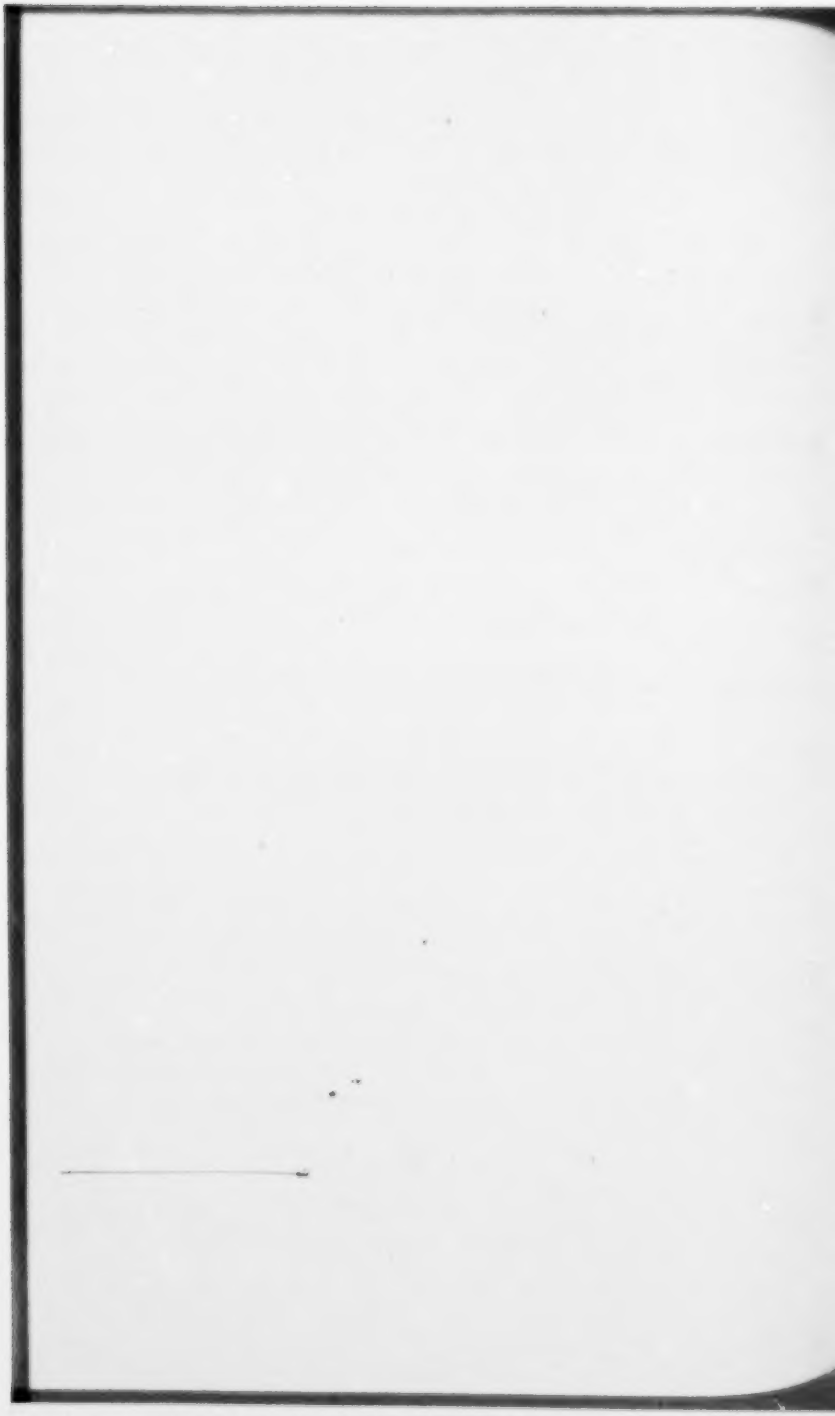

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

STATEMENT IN RESISTANCE TO JURISDICTION

Appellees hereby resist the jurisdiction of this Court and as grounds therefor state:

(1) The Appellant has not stated substantial grounds meriting review by this Court;

(2) It is the duty of this Court to decline jurisdiction whenever it appears that the alleged Federal Constitutional question is not substantial in character;

(3) Questions of violation of State Constitution will not be reviewed by this Court;

(4) The Fourteenth Amendment invoked by Appellant permits classification, and the Courts will not interfere with a legislative classification unless it is arbitrary, capricious, hostile, palpably erroneous, and very wide of any reasonable mark;

(5) The Fourteenth Amendment to the Federal Constitution does not require an ironclad rule of equal taxation by states, and this Court will not interfere unless the classification adopted by the state is arbitrary, capricious, hostile, and palpably erroneous;

(6) In the matter of classification, the states have a wide discretion; and in the field of taxation the states have a broader power of classification than in other fields of legislation;

(7) The Legislative Enactment challenged by Appellant merely classifies agricultural land for different tax treatment from other real estate for school purposes, and such classification is not arbitrary, capricious, hostile and palpably erroneous, and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(8) The classification of agricultural lands into tracts of ten acres or more is not an arbitrary, hostile, nor capricious classification, and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(9) The classification of school districts into those having a millage rate of more or less than 15 mills is not arbitrary, hostile, nor capricious and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(10) The Record in the instant case shows on its face that the legislative enactment here under attack is based upon clear constitutional power of the State Legislature,

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and does not violate the First Section of the Fourteenth Amendment to the Federal Constitution, as interpreted by this Court; and

(11) This Court should deny the review sought by Appellant.

BRIEF IN SUPPORT OF RESISTANCE TO APPELLANT'S STATEMENT OF JURISDICTION

Introduction

The legislative enactment, the constitutionality of which is challenged herein by Appellant, is found in Chapter 426, pages 1228, 1229, Code of Iowa, 1946, as amended by Chapter 152, Laws of the 52nd General Assembly of Iowa. The pertinent portions of said enactment are set forth correctly in paragraph "B" of Appellant's "Statement As to Jurisdiction" except that there should be added to Section 426.6 (P. 3 of Statement) the following enacted as a part of Chapter 152, Section 13, Laws of 52nd General Assembly of Iowa:

> "The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairman of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten (10) days after such hearing, mail to the owner at his last known address, notice of its decision. In the event of disallowance the owner may, within ten (10) days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final."

Appellant's challenge to the constitutionality of this legislative enactment is based upon certain provisions of the Constitution of Iowa. This challenge was denied by the Supreme Court of Iowa in its opinion filed December 14, 1948, and reported in 35 N. W. (2d) 66. It is therefore ele-

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mentary that this Court will not review the opinion of the State Court on state constitutional questions.

Appellant's challenge to the constitutionality of the legislative enactment under the Constitution of the United States (and the only question pertinent to this appeal) is that the classifications under the enactment are violative of Section One of the Fourteenth Amendment to the Constitution of the United States in that Appellant alleges and argues that said classifications grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers.

The classifications complained of are:

(1) Classification of agricultural lands used for agricultural or horticultural purposes in a class separate and apart from other real estate for "credits" upon taxes for general school purposes;

(2) The further classification of agricultural lands upon the basis of tracts of ten acres or more in order to be entitled to the credits; and

(3) The limitation of said agricultural lands to school districts wherein the levy for general school (operational) purposes exceeds fifteen mills, and the application of the moneys (credits) appropriated from the state treasury to those school districts wherein the said levy exceeds fifteen mills.

It is to be noted that the appropriation is made, and the funds paid, to the school district wherein the "credits" are effected and the actual operation amounts to legislative determination that a "ceiling" of fifteen mills is placed upon "agricultural lands" as defined in the legislative enactment, and the appropriation from the state treasury merely re-imburses the school district for the revenue lost by reason of such ceiling.

I

Proposition

It is the duty of this Court to decline jurisdiction unless the Federal constitutional question is substantial in character.

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(Dismissed on appeal for want of a substantial Federal question), 283 U. S. 809, 75 L. Ed. 1427, 51 S. Ct. 647;

Vilas v. *Iowa State Board of Assessment and Review*, 223 Iowa 604, 273 N. W. 338;

(Dismissed on appeal for want of a substantial Federal question), 302 U. S. 637, 82 L. Ed. 496, 58 S. Ct. 38;

United States v. *Johnson*, 327 U. S. 106 at 113, 90 L. Ed. 562 at 566, 66 S. Ct. 464 at 467;

Missouri v. *Dockery*, 191 U. S. 165 at 170, 171, 48 L. Ed. 133 at 134, 24 S. Ct. 53 at 54.

Application of Cases Cited

The rule is elementary that a substantial Federal constitutional question must be raised to justify review by this Court.

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In *Sugarman* v. *United States, supra,* (249 U. S. at 184) this Court stated the rule as follows:

> "But mere reference to a provision of the Federal Constitution, or the mere assertion of a claim under it, does not authorize this court to review a criminal proceeding; and it is our duty to decline jurisdiction unless the writ of error presents a constitutional question substantial in character and properly raised below."

This rule was applied by this Court in *Zucht* v. *King, supra,* wherein this Court (260 U. S. at 176) said:

> "But, although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not, and was not at the time of granting the writ, substantial in character. Sugarman *v.* United States, 249 U. S. 182, 184."

See also *Corrigan* v. *Buckley, supra,* wherein this Court (271 U. S. at 329) stated the rule as follows:

> "The mere assertion that the case is one involving the construction or application of the Constitution, and in which the construction of federal laws is drawn in question, does not, however, authorize this Court to entertain the appeal; and it is our duty to decline jurisdiction if the record does not present such a constitutional or statutory question substantial in character and properly raised below. Sugarman *v.* United States, 249 U. S. 182, 184; Zucht *v.* King, 260 U. S. 174, 176."

The Appellant states no substantial Federal question in her "Statement as to Jurisdiction." In Paragraph "G," page 10 thereof she merely asserts that the legislative enactment constitutes arbitrary classification, appropriates state funds for a private purpose, and is unconstitutional in the amount, manner, and method by which the exemption or tax credit and the allocation of the funds to the school

district is determined under the statute; that the legislative enactment appropriates five million dollars annually to pay the tax credits provided therein; that the money so appropriated is raised by general statewide taxation; and that every taxpayer in Iowa, as well as Appellant herein has a vital interest in the matter.

This is a "mere assertion that the case is one involving the * * * application of the Constitution" and "does not authorize this Court to entertain the appeal" in this case, nor justify this Court in so doing. *Sugarman* v. *U. S.*, 249 U. S. at 184; *Zucht* v. *King*, 260 U. S. at 176.

II

Proposition

The Fourteenth Amendment permits classification, and does not prescribe any ironclad rule of equality in taxation, and the Courts will not interfere unless the legislative classification is arbitrary, capricious, hostile, palpably erroneous, and very wide of any reasonable mark

AUTHORITIES

Bell's Gap R. R. Co. v. *Pennsylvania*, 134 U. S. 232 at 237, 33 L. Ed 892 at 895, 10 S. Ct. 533;

Home Ins. Co. v. *New York*, 134 U. S. 594 at 606, 33 L. Ed. 1025 at 1032, 10 S. Ct 593 at 597;

Orient Ins. Co. v. *Daggs*, 172 U. S. 557 at 562, 43 L. Ed. 552 at 554, 19 S. Ct. 281 at 282;

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89 at 92, 94, 95, 45 L. Ed. 102 at 104, 105, 21 S. Ct. 43 at 45, 46;

Michigan Central R. Co. v. *Powers*, 201 U. S. 245 at 293 and 302, 50 L. Ed. 744 at 761 and 765, 26 S. Ct. 459 at 462 and 466;

Southwestern Oil Co. v. *Texas*, 217 U. S. 114 at 123, 54 L. Ed. 688 at 692, 693, 30 S. Ct. 496 at 499;

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Brown-Forman Co. v. *Kentucky*, 217 U. S. 563 at 572, 54 L. Ed. 883 at 886, 887, 30 S. Ct. 578 at 579, 580;
Toyota v. *Ter. of Hawaii*, 226 U. S. 184 at 191, 192, 57 L. Ed. 180 at 184; 53 S. Ct. 47 at 48;
Citizens Tel. Co. v. *Fuller*, 229 U. S. 322 at 329, 332, 57 L. Ed. 1206 at 1213, 1214, 33 S. Ct. 833 at 835, 836;
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245 at 255, 67 L. Ed. 237 at 241, 25 S. Ct. 83 at 84, 85;
Puget Sound Co. v. *King County*, 264 U. S. 22 at 27, 28, 68 L. Ed. 541 at 546, 44 S. Ct. 261 at 263;
Stebbins v. *Riley*, 268 U. S. 137 at 142, 143, 69 L. Ed. 884 at 888, 889, 45 S. Ct. 424 at 426, 44 A. L. R. 1454 at 1459, 1460;
Ohio Oil Co. v. *Conway*, 281 U. S. 146 at 159, 160, 74 L. Ed. 775 at 782, 50 S. Ct. 310 at 314;
Lawrence v. *State Tax Com. of Mississippi*, 286 U. S. 276 at 284, 76 L. Ed. 1102 at 1108, 52 S. Ct. 556 at 559;
Williams v. *Mayor and City Council of Baltimore*, 289 U. S. 36 at 42 and 46, 77 L. Ed. 1015 at 1022 and 1024, 53 S. Ct. 431 at 433 and 434, 435;
Metropolitan Casualty Co. of New York v. *Brownell*, 294 U. S. 580 at 584, 79 L. Ed. 1070 at 1073, 55 S. Ct. 538 at 539, 540;
Aero Transit Co. v. *Georgia Pub. Service Com.*, 295 U. S. 285 at 290, 293, 79 L. Ed. 1439 at 1444, 1445, 55 S. Ct. 709 at 711, 712;
Carmichael v. *So. Coal & Coke Co.*, 301 U. S. 495 at 509, 510, 81 L. Ed. 1245 at 1253, 57 S. Ct. 868 at 872;
New York Rapid Transit Corp. v. *New York*, 303 U. S. 573 at 578, 579, 82 L. Ed. 1024 at 1030, 58 S. Ct. 721 at 724, 725;
Madden v. *Commonwealth of Kentucky*, 309 U. S. 83 at 87, 90, 82 L. Ed. 590 at 593, 60 S. Ct. 406 at 408;
Tigner v. *Texas*, 310 U. S. 141 at 145, 146, 84 L. Ed. 1124 at 1127, 60 S. Ct. 879 at 881.

Application of Cases Cited

The "parent" cases, among more recent authorities on the proposition that the Fourteenth Amendment permits classification, do not prescribe any ironclad rule of taxation, and that a classification determined upon by a legislature will not be disturbed by the Courts unless it is clearly arbitrary, capricious, hostile, and palpably erroneous are *Bell's Gap R. R. Co.* v. *Pennsylvania, supra,* and *Home Ins. Co.* v. *New York, supra.*

In *Bell's Gap R. R. Co.* v. *Pennsylvania,* this Court, 134 U. S. at 237, stated the rule as follows:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; *it may tax real estate and personal property in a different manner;* it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. *We*

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think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt." (Italics supplied)

And in *Home Ins. Co.* v. *New York,* 134 U. S. at 606, this Court said:

> "But the amendment does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation, and another kind of property to different rate—distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it."

In *Orient Ins. Co.* v. *Daggs,* 172 U. S. at 562, this Court, with reference to classification under the Fourteenth Amendment said:

> "It is not necessary to state the reasoning upon which classification by legislation is based or justified. This court has had many occasions to do so, and only lately reviewed the subject in *Magoun* v. *Illinois Trust and Savings Bank,* 170 U. S. 283. We said in that case that 'the State may distinguish, select and classify objects of legislation, and necessarily the power must have a wide range of discretion.' And this because of

the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. *It suffices if it is practical, and is not reviewable unless palpably arbitrary.*" (Italics supplied)

In *Citizens Tel. Co.* v. *Fuller*, 229 U. S. at 329, 331, this Court said:

"The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 92, that from time out of mind it has been the policy of this Government to classify for the purpose of taxation, and a discrimination was supported between taxation of producers and manufacturers of products; and yet in *Billings v. Illinois*, 188 U. S. 97, 102, we compared the rule with that in *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, where a distinction between buyers of products and the producers of them was held an illegal discrimination.

It may, therefore, be said that in taxation there is a broader power of classification than in some other exercises of legislation. • • •

To these cases may be added others. They illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. *Cook v. Marshall County*, 196 U. S. 261, 274; *Missouri v. Dockery*, 191 U. S. 165. The cases decided subsequent to the decision in *Bell's Gap Railroad Co. v. Pennsylvania*, have applied its principle to many varying instances. Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney v. New York*, 222 U. S. 525, 536. The State is

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not bound by any rigid equality. This is the rule;—its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those 'discriminations which the best interests of society require.' "

In *Heisler* v. *Thomas Colliery Co.*, 260 U. S. at 255, this Court stated the rule as follows:

> "In its exercise in taxation, we have said, it is competent for a State to exempt certain kinds of property and tax others, the restraints upon it only being against 'clear and hostile discriminations against particular persons and classes.' Discriminations merely are not inhibited, for, it was recognized, that there are 'discriminations which the best interests of society require.' *Bell's Gap R. R. Co. v. Pennsylvania,* 134 U. S. 232, 237.
>
> The principle of that case, and its concession to the power of a State, has received expression and illustration in cases which concerned the exercise of the power in the classification of objects for taxing purposes. In *Watson v. State Comptroller,* 254 U. S. 122, 124, it is said, 'Any classification is permissible which has a reasonable relation to some permitted end of governmental action. . . . It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' In other cases it is said that facts which can be reasonably conceived of as having existed when the law was enacted will be assumed to justify it. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Crescent Cotton Oil Co. v. Mississippi,* 257 U. S. 129, 137. And 'it makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety.' "

To this point, and to the question of violation of the provisions of the state constitution, this Court in *Puget Sound Co.* v. *King County,* 264 U. S. at 27, 28, said:

> "We are considering this case only from the standpoint of the Fourteenth Amendment to the Federal Constitution. The objections based on the state constitution of Washington have been settled adversely and conclusively for us by the decision herein of the State Supreme Court. Counsel cite us cases which have little relation to the federal question before us. *Johnson v. Wells Fargo & Co.,* 239 U. S. 234; *Ewert* v. *Taylor,* 38 S. D. 124; *State ex rel. Owen v. Donald,* 161 Wisc. 188, and like cases involved the application of somewhat stringent provisions of state constitutions as to equality of taxation on all kinds of property which left but little room for classification. Such restrictions have much embarrassed state legislatures because actual equality of taxation is unattainable. The theoretical operation of a tax is often very different from its practical incidence, due to the weakness of human nature and anxiety to escape tax burdens. This justifies the legislature, where the Constitution does not forbid, in adopting variant provisions as to the rate, the assessment and the collection for different kinds of property. The reports of this Court are full of cases which demonstrate that the Fourteenth Amendment was not intended, and is not to be construed, as having any such object as these stiff and unyielding requirements of equality in state constitutions. No better statement of the unvarying attitude of this Court on this subject can be found than in the often quoted language of Mr. Justice Bradley in speaking for the Court in Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232, 237."

See also *Ohio Oil Co.* v. *Conway,* 281 U. S. at 159 wherein this Court said:

> "The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic

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concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The States, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the Fourteenth Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. *The State may tax real and personal property in a different manner. It may grant exemptions.* The State is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." (Italics supplied.)

In *Lawrence* v. *State Tax Com.*, 286 U. S. at 284, it is said that tax burdens "which are based upon discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions."

Williams v. *Mayor and City Council of Baltimore*, 289 U. S. 36, sustained an exemption from taxation of a single railroad. This Court (289 U. S. at 46) said:

> "Time with its tides brings new conditions which must be cared for by new laws. Sometimes the new conditions affect the members of a class. If so, the correcting statute must apply to all alike. Sometimes the new conditions affect one only or a few. If so the

correcting statute may be as narrow as the mischief. The Constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which existing general laws are incompetent to cope. The special public purpose will then sustain the special form. *Baltimore* v. *United Railways Co., supra.* The problem in last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in cases of plain abuse will there be revision by the courts."

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. at 508, 510, this Court stated the rule as follows:

"Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use * * *. It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. See *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237; *Lawrence v. State Tax Comm'n*, 286 U. S. 276, 284, This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 293; *Americrcan Sugar Refining Co. v. Louisiana*, 179 U. S. 89, 94; *Armour Packing Co. v. Lacy*, 200 U. S. 226, 235; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573; *Quong Wing v. Kirkendall*, 223 U. S. 59, 62, 63; *Armour & Co. v. Virginia*, 246 U. S. 1, 6; *Alaska Fish Co. v. Smith*, 255 U. S. 44, 48; *State Board of Tax Comm'rs v. Jackson*, 283 U. S. 527, 537; *Broad River Power Co. v. Query*, 288 U. S. 178, 180; *Fox v. Standard Oil Co.*, 294 U. S. 87, 97; *Cincinnati Soap Co. v. United States, ante*, p. 308; *Great Atlantic & Pacific Tea Co. v. Grosjean, ante*, p. 142.

Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class

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or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 255; *Swiss Oil Corp. v. Shanks*, 273 U. S. 407, 413; *Lawrence v. State Tax Comm'n, supra;* cf. *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U. S. 580, 584.

This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible lattitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

See also *Rapid Transit Corp.* v. *City of New York*, 303 U. S. at 578; and *Madden* v. *Kentucky*, 309 U. S. 83, wherein this Court at pp. 87, 88, said:

> "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed

out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

From the foregoing cases, and hundreds more which might be cited, it is apparent that the Fourteenth Amendment permits classification for tax purposes; that it does not prohibit a state from adjusting its tax burdens upon any basis deemed fair and equitable by the legislature thereof; that the Amendment does not prescribe any iron-clad rule of tax equality, but permits discriminations; and that the Courts will not interfere with a legislative classification unless it is clearly arbitrary, capricious, hostile, and palpably erroneous.

III

Proposition

A legislative classification of agricultural or horticultural lands or producers in a class and according them partial tax exemption or tax credits is a reasonable exercise of legislative discretion and within the legislative power, and is not clearly arbitrary, capricious, hostile or palpably erroneous; and is therefore not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Authorities

American Sugar Refining Co. v. *Louisiana*, 179 U. S. 89 at 92, 94, 95, 45 L. Ed. 102 at 104, 105, 21 S. Ct. 43 at 45, 46;

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Lawrence v. *State Tax Commission of Miss.*, 286 U. S. 286 at 280, 281, 76 L. Ed. 1102 at 1106, 52 S. Ct. 556 at 557;

Continental Baking Co. v. *Woodring*, 286 U. S. 352 at 372, 76 L. Ed. 1155 at 1167, 52 S. Ct. 595 at 602;

Hicklin v. *Coney*, 290 U. S. 169 at 176, 78 L. Ed. 247 at 252, 54 S. Ct. 142 at 145;

Aero Transit Co. v. *Georgia Pub. Serv. Com.*, 295 U. S. 285 at 291, 79 L. Ed. 1439 at 1444, 1445, 55 S. Ct. 709 at 711, 712;

Carmichael v. *So. Coal & Coke Co.*, 301 U. S. 495 at 512, 81 L. Ed. 1245 at 1255, 57 S. Ct. 868 at 873, 874;

Tigner v. *Texas*, 310 U. S. 141 at 145, 147, 84 L. Ed. 1124 at 1127, 1128, 60 S. Ct. 879 at 881;

Nashville, C. & St. L. Ry. v. *Browning*, 310 U. S. 362 at 368, 369, 60 S. Ct. 968 at 972, 84 L. Ed. 1254 at 1257, 1258;

Lake Superior Consolidated Iron Mines v. *Lord*, 271 U. S. 577 at 582, 70 L. Ed. 1093 at 1101, 46 S. Ct. 627 at 629;

Cook v. *Marshall County*, 196 U. S. 261 at 274, 49 L. Ed. 471 at 476, 25 S. Ct. 233 at 237;

Liberty Warehouse Co. v. *Burley Tobacco Grower's Cooperative*, 276 U. S. 71 at 89, 90 and 96, 72 L. Ed. 473 at 480 and 483, 48 S. Ct. 291 at 294 and 297;

Clark v. *Kansas City*, 176 U. S. 114 at 117, 119, and 120, 44 L. Ed. 392 at 397, 20 S. Ct. 284 at 286;

Thomas v. *Gay*, 169 U. S. 264 at 278 and 280, 281, 42 L. Ed. 740 at 746, 747, 18 S. Ct. 340 at 345, 346;

Henderson Bridge Co. v. *City of Henderson*, 173 U. S. 592 at 603, 615, and 620, 621, 43 L. Ed. 823 at 827 and 832, 833, 19 S. Ct. 553 at 557, and 562, 564;

Great Northern Ry. Co. v. *Whitfield*, 272 N. W. 787 at 792, 794, 65 S. D. 173;

Hill v. *Rae*, 158 Pac. 826 at 828, 829, 52 Montana 378;
Apartment Operators' Ass'n v. *City*, 254 N. W. 443 at 444, 445, 191 Minn. 365;
Leicht v. *City of Burlington*, 73 Iowa 29 at 30, 32, 34, N. W. 494;
Farwell v. *Brick Mfg. Co.*, 97 Iowa 286 at 294, 66 N. W. 176;
Clear Lake Co-op L. S. S. Ass'n v. *Weir*, 200 Iowa 1293 at 1298, 206 N. W. 297 at 299;
Blume v. *Crawford Co.*, 217 Iowa 545 at 550, 551, 250 N. W. 733 at 735.

Application of Cases Cited

The Supreme Court of Iowa held, in the instant case, that the legislative enactment was enacted in aid of agriculture, and that the classification of "agricultural lands" as "all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres lying within any school corporation in this state and *in good faith used for agricultural or horticultural purposes.* Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and *in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter*" (Italics supplied.) See Par. B, Appellant's Statement as to Jurisdiction (Section 426.2, Code of Iowa), at page 2) was not in violation of Section 1, Fourteenth Amendment to the Constitution of the United States.

This question has been determined by this Court so many times that it no longer presents a substantial Federal question.

The opinion of the Supreme Court of Iowa (Filed December 14, 1948, and reported in 35 N. W. (2d) 66 and appended

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to Appellant's Statement as to Jurisdiction as Appendix "C") that this classification for the purposes of taxation, partial tax exemption, or tax "credits" was amply supported by opinions of this Court, the Supreme Court of Iowa, and the Courts of highest jurisdiction of many states of the United States.

Time will not permit treatment of all such cases. Reference to all cases hereinbefore cited is respectfully requested.

In *American Sugar Ref. Co.* v. *Louisiana*, 179 U. S. 89 at 95, this Court sustained a classification of sugar refiners for the purpose of taxation into those who refined the products of their own plantations, and those who engaged in a general refining business, and at the cited page said:

> "*The discrimination is obviously intended as an encouragement to agriculture*, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws." (Italics supplied)

This last cited case has been cited and followed many times by this Court and by the Courts of highest jurisdiction in the States of the United States.

It is true that the tax there involved was a license tax, but this is immaterial. This Court, in *Lawrence* v. *State Tax Com.*, 286 U. S. 276 at 280, said:

> "The present tax has been defined by the Supreme Court of Mississippi as an excise and not a property tax, *Hattiesburg Grocery Co. v. Robertson*, 126 Miss. 34; 88 So. 4; *Knox v. Gulf, M. & N. R. Co.*, 138 Miss. 70; 104 So. 689, but in passing on its constitutionality we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it. See *Educational Films Corp. v. Ward*, 282 U. S. 379, 387; *Pacific Co. v. Johnson*, 285 U. S. 480; *Shaffer v. Carter, supra*, pp. 54-55."

This Court sustained as reasonable and not arbitrary the exemption of farmers as a class from a license fee required

of other carriers. In *Acro Mayflower Transit Co.* v. *Georgia Pub. Service Com.*, 295 U. S. 285 at 290, 291, this Court said:

> "The court took notice of a common opinion, 'well justified by the facts,' that the farm lands of the state had been 'accustomed to bear an undue proportion of the taxes.' The effect of the exception would be to equalize the burden. 'Every one knows that as a general rule a tax of this kind finally reaches the consumer of the product, or user of the service; and hence an exemption of carriers of such products is to be taken as an exemption of the products themselves, and not of the carrier.' The enumeration of rational bases of distinction was not put forward as exhaustive. The court expressed the belief that others could be added.
>
> We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

The *Supreme Court of South Dakota in Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 254 N. W. 787 likewise took judicial notice of the fact that lands used exclusively for agricultural purposes receive less benefits from school taxes than other lands. In the cited case, the Court, 272 N. W. at 792, 793, said:

> "We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source. See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by indi-

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viduals, but not if owned by corporations. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture."

The Supreme Court of Iowa in the instant case, 35 N. W. 2d 66 at 73 said:

"It is true of course there are common characteristics between agricultural land and other realty in the matter of taxation for school purposes. But we cannot say there are not characteristics which differentiate it from other realty in relation to school taxes. We are not convinced the legislature could not with reason conclude that agricultural land derives less benefit, in enhanced value or otherwise, from the money raised by school taxes than other real estate. City or town residence property or real estate used for business purposes may well be affected by our school system in quite a different way than land used for agricultural purposes which consists of comparatively large tracts. The legislature could reasonably have concluded that agricultural lands are taxed excessively for school purposes as compared with property devoted to other uses and that such taxes should be equalized in accordance with benefits received. * * *

Leicht v. City of Burlington, 1887, 73 Iowa 29, 31, 34 N. W. 494, 495, upheld as uniform in the constitutional

sense chapter 47, Acts 16th General Assembly (as amended section 616, Code, 1897, section 404.4, Code, 1946), which completely exempted from taxation for any municipal purpose, except road tax, lands within the extended limits of a city or town containing more than ten acres, occupied and used for agricultural purposes. The opinion states 'the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes.'

The language just quoted is repeated in Farwell v. Des Moines Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, apparently as stating the effect of the decision in Leicht v. Burlington, supra. 1 Cooley, 4th Ed., Section 284, page 599, says that in Iowa an exemption from city taxation of agricultural or unplatted land in a city has been upheld, citing the Leicht case."

See Appellant's Statement as to Jurisdiction, Appendix "C", p. 8, 9.

Furthermore, this fact was substantiated by proof. Exhibit "B" (certified to this Court) shows that the ratio of taxable farm property per child to taxable non-farm property per child in Iowa in 1941 in the 99 counties in Iowa was from 1.85 to 1 in Dubuque County to 8.97 in Mills County. Exhibit "C" shows the ratio in 97 consolidated schools of Iowa was from .97 to 1 in the Cotter District to 62.80 to 1 in the Sommers District. Exhibit "D" shows that the ratio of taxable farm property to non-farm property in 99 city or town independent districts was from 1.17 to 1 in Ridgeway District to 68.37 to 1 in Jewell District.

In other words the farm or agricultural property paid from 1.17 to 68.37 times as much school taxes per child as did the non-farm property. To say that the legislature could not under the Fourteenth Amendment equalize this school tax burden "would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful in-

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dustries." *Bell's Gap. R. R. Co.* v. *Pennsylvania,* 134 U. S. at 237.

This Court, in *Carmichael* v. *Southern Coal & Coke Co.,* 301 U. S. at 512, said:

> "Reasons for the selections, if desired, readily suggest themselves. Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one, *American Sugar Refining Co. v. Louisiana, supra; Heisler v. Thomas Colliery Co., supra; Aero Transit Co. v. Georgia Public Service Comm'n, supra;* or to restrict or suppress the other, *Magnano Co. v. Hamilton,* 292 U. S. 40; *Fox v. Standard Oil Co., supra; Quong Wing v. Kirkendall, supra; Singer Sewing Machine Co. v. Brickell,* 233 U. S. 304; *Alaska Fish Co. v. Smith, supra,* 48; *Great Atlantic & Pacific Tea Co. v. Grosjean, supra.* The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficent enterprise. *This Court has often sustained exemption for the encouragement of agriculture, American Sugar Refining Co. v. Louisiana, supra,* 95; *Aero Transit Co. v. Georgia Public Service Comm'n, supra,* 291. Similarly, the legislature is free to aid a depressed industry such as shipping. The exemption of business operating for less than twenty weeks in the year may rest upon similar reasons, or upon the desire to encourage seasonal or unstable industries." (Italics supplied.)

That property may be classified for tax purposes, taxing one class and exempting another, without violating the equal protection of the Fourteenth Amendment, is settled beyond peradventure of doubt by this Court in *Nashville C. & St. L. Ry.* v. *Browning,* 310 U. S. 362, wherein at p. 368 it is said:

> "This Court had previously had occasion to advert to the narrow and sometimes cramping provision of these state uniformity clauses, and has left no doubt that their inflexible restrictions upon the taxing powers of the state were not to be insinuated into that meritorious

conception of equality which alone the Equal Protection Clause was designed to assure. See *Puget Sound Co. v. King County*, 264 U. S. 22, 27.

That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the common-places of taxation and of constitutional law." • • • Since, so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. *If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous.* If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment." (Italics supplied.)

Referring to *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, this Court, in *Cook* v. *Marshall County*, 196 U. S. at 274 said:

"It can scarcely be doubted that, if the *Connolly* case had dealt with the subject of taxation, a discriminative tax upon producers of agricultural products, either greater or less than that imposed upon other manufacturers or producers, might have been held valid without denying to either party the equal protection of the laws."

Also referring to *Connolly's* case, this Court in *Tigner* v. *Texas*, 310 U. S. at 145, 146, said:

"Since *Connolly's* case was decided, nearly forty years ago, an impressive legislative movement bears

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witness to general acceptance of the view that the differences between agriculture and industry call for differentiation in the formulation of public policy. The states as well as the United States have sanctioned cooperative action by farmers; have restricted their amenability to the anti-trust laws; have relieved their organizations from taxation."

See also *Lake Superior Con. Iron Mines* v. *Lord*, 271 U. S. 577, wherein a classification of "ore" lands was sustained. *Liberty Warehouse Co.* v. *Burley Tobacco Grower's Co-operative Marketing Ass'n.*, 276 U. S. at 96 "recognized as permissible some discrimination intended to encourage agriculture" citing *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 95.

In *Clark* v. *Kansas City*, 176 U. S. 114, this Court sustained a tax statute which excepted "from its operation lands used for agricultural purposes if owned by individuals." The Court, p. 120, said:

> "In the case at bar the distinction is between tracts of agricultural lands in a certain relation to cities and lands used for other purposes in such relation.
>
> We think the distinction is justified by the principle of the cases we have cited. That principle leaves to the State the adaptation of its laws to its conditions."

In *Henderson Bridge Co.* v. *City of Henderson*, 173 U. S. 592, this Court sustained an attack upon the city charter which exempted tracts of land of ten acres devoted to farming purposes. At p. 620, 621, this Court said:

> "The assignments of error embrace the contention that the judgment below denies to the Bridge Company the equal protection of the laws, 'in that its property has been subjected to taxation from which all other land not divided into lots has been exempted, although the only reason for exemption apply with much greater force to the property of the plaintiff in error than to the property which enjoys the exemption.'

This contention is based upon the proviso in the city's charter declaring that 'no land embraced within the city limits, and outside of ten-acre lots as originally laid off, shall be assessed and taxed by the city council, unless the same is divided or laid out into lots of five acres or less, and unless all of same is actually used and devoted to farming purposes.' Kentucky Acts 1887-88, Vol. 2, p. 991.

We are of opinion that this proviso has no reference to bridges, their approaches, piers, etc., but refers only to lands capable of being cultivated or used and divided into lots upon which buildings may be erected or over which streets or other highways may be constructed. This is the better interpretation of both the old and the new charter of the city. Besides, the construction placed by the state court upon the charter of the city in respect of its power to tax the bridge property necessarily leads to the conclusion that the provision forbidding the taxation of lands not divided into lots of five acres or less does not apply to a bridge erected over the Ohio River within the city's limits. In this view there is no basis for the suggestion of a denial of the equal protection of the laws," * * *.

The Courts of highest jurisdiction in numerous states of the United States have followed the foregoing cited cases decided by this Court.

In *Hill* v. *Rae*, 52 Montana 578, 158 Pac. 826 at 828, 829, the Supreme Court of Montana said:

"That classification is permissible, because in the essential nature of things and in any due appreciation of equality in the operation of the law it is necessary in legislation for purposes of revenue, or in the application of the police power strictly so-called, or *in legislation designed to increase the industries of the state, develop its resources, or add to its wealth and prosperity, is abundantly settled by judicial decision as well as by the course of legislation.* To cover the entire field of this subject is impossible within any reasonable

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limits. Suffice it to say that by the Supreme Court of the United States, construing this very amendment, classifications have been sustained based upon differences in the amount of legacies, differences between corporations, *differences between land dependent on its us for agricultural and other purposes,* differences between fire insurance and other insurance, differences in the character of work, differences between hiring persons to labor in the state and hiring persons to labor out of the state, differences between sugar refineries based entirely on whether the sugar refined was purchased or produced by the refiner, as well as various other differences too numerous to mention. Magoun v. Illinois T. & S. Bank, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037; Clark v. Kansas City, 176 U. S. 114, 20 Sup. Ct. 284, 44 L. Ed. 392; Gundling v. Chicago, 177 U S. 183, 20 Sup. Ct. 633, 44 L. Ed. 725; Petit v. Minnesota, 177 U. S. 164, 20 Sup. Ct. 666, 44 L. Ed. 716; Williams v. Fears, 179 U. S. 270, 21 Sup. Ct. 128, 45 L. Ed. 186, American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 Sup. Ct. 43, 45 L. Ed. 102; and cases cited in these decisions. * * *"

"In Clark v. Kansas City, supra, a state statute was under consideration which authorized certain cities to annex lands adjoining the city limits, but provided that 'nothing in this act shall be taken or held for agricultural purposes when the same is not owned by any railroad or other corporation,' and the court upheld the distinction, declaring that it was justified by the principle of the cases cited above:

> 'That principle leaves to the state the adaptation of its laws to its conditions. The growth of cities is inevitable, and in providing for their expansion it may be the judgment of an agricultural state that they should find a limit in the lands actually used for agriculture.'

"In American Sugar Refining Co. v. Louisiana, supra, a state statute imposing a license tax upon persons and corporations carrying on the business of refining

sugar and molasses, but exempting from its operation 'planters and farmers grinding and refining their own sugar and molasses,' was sustained with the remark that:

> 'The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws.'

"So, too, legislative activity having for its avowed purpose the encouragement of this or that particular industry deemed of importance to the state has been prolific of results." (Italics supplied)

The Supreme Court of South Dakota, in *Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 254 N. W. 787 likewise took judicial notice of the fact that lands used exclusively for agricultural purposes receive less benefits from school taxes than other land, sustained a classification of agricultural lands for tax purposes, and cited numerous cases from this Court construing the Fourteenth Amendment to the Federal constitution.

In the cited case, the Court, 272 N. W. at 792, 793, said:

> "*We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source.* See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by individuals, but not of owned by corporations. *It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adquate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land.* For example, a merchant's business or even a railroad's business, which is dependent some-

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what upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. *So far as concerns real estate, which is set apart primarily for homes or residenced by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture.* Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented.

We believe it reasonable for a Legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. Southwestern Oil Co. v. Texas, 217 U. S. 114, 30 S. Ct. 496, 54 L. Ed. 688; American Sugar Refining Company v. Louisiana, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102; Bell's Gap Railroad Co. v. Pennsylvania, supra.

In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification. This opinion is further confirmed by a reading of the case of Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237, wherein it was held that the differences between bituminous coal and anthracite forms a just basis for their different classification under the tax laws, and the case of State Tax Board of Com'rs v. Jackson, 283 U. S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A. L. R. 1464, wherein it was held that the differences between chain store operation and the conduct of a single store was a sufficient basis for legislative classification for taxation." (Italics supplied)

The State of Iowa has, for more than 70 years, had a statute which exempted lands used for agricultural pur-

poses (in tracts of ten acres or more) from municipal taxes, except for library purposes and at not to exceed one and one-fourth (1¼) mills for road purposes. Section 404.4, Code of Iowa, 1946, provides as follows:

> "404.4 Agricultural lands. No land included within the limits of any city or town which shall not have been laid off into lots of ten acres or less, or which shall not subsequently be divided into parcels of ten acres or less by the extension of streets and alleys, and which shall also in good faith be occupied and used for agricultural or horticultural purposes, shall be taxable for any city or town purpose, except that said lands and all personal property necessary to the use and cultivation of said agricultural or horticultural lands shall be liable to taxation for city and town road purposes, at not exceeding one and one-fourth mills; and for library purposes."

This statute was first enacted as Chapter 47, Laws of the 16th General Assembly of Iowa in 1876. It then provided for its application to tracts of land of twenty acres or more used for agricultural purposes. This statute was amended by Chapter 169, Laws of the 17th General Assembly of Iowa in 1878 to reduce the size of the tracts to ten acres.

This statute was attached in *Leicht* v. *City of Burlington*, 73 Iowa 29, 34 N. W. 494 upon the grounds that the classification was purely arbitrary, discriminatory, and capricious, and denied the plaintiff of the equal protection of the laws.

The Supreme Court of Iowa, in 73 Iowa at 31, 34 N. W. at 495, said:

> "It is urged by the plaintiffs, to be sure, that the distinction which the legislature has attempted to make between lots containing more than 10 acres, and those containing 10 acres or less, is purely arbitrary, and that for this reason the act cannot be said to have a uniform

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operation, as it might if the larger lots as provided could be said to constitute a class, as distinguished from the smaller lots. *As to this we think it may be said that the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes. Where the limits of a city are extended so as to take in what is used essentially as a farm, there is much reason for exempting it from city taxes.* But where the property is substantially residence property, as distinguished from agricultural, and valuable only as such whether improved or not, there is less reason, when it becomes city property, that it should be exempt from city taxes." (Italics supplied)

In *Farwell* v. *Brick Mfg. Co.*, 97 Iowa 286 at 294, 295; 66 N. W. 176 at 179, in commenting on *Leicht* v. *City of Burlington, supra,* said:

> "In Leicht *v.* City of Burlington, 73 Iowa, 29 (34 N. W. Rep. 494), in which was involved the constitutionality of the act of the Sixteenth General Assembly, it was said that 'the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes.'"

In *Blume* v. *Crawford County,* 217 Iowa 545 at 550, 551; 250 N. W. 733 at 735, 736, the Supreme Court of Iowa sustained a declaration of public policy of the legislature of Iowa to aid agriculture against attack on the grounds of unconstitutionality. At the cited page, 217 Iowa at 550, 551, 250 N. W. 735, 736, the Court said:

> "So in the case at bar the legislature in chapter 138 of the Code has declared the public policy of this state, with reference to extending aid to agriculture, the great basic industry of this state. There is no inhibition against this power in any of the provisions of the Constitution, and it is not repugnant to any constitutional provision. The legislature, under the powers vested in it by the state, has extended aid to farm

associations for the purpose of aiding agriculture, horticulture, animal industry, and similar kindred occupations. The unconstitutionality of this act is raised at a time when the national government, and all state governments, are bending every effort to aid agriculture in their present distressed condition. The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally. The act in question is a valid exercise of the state's governmental functions, and does not delegate the taxing power of the state to a nonofficial body. The lower court held this legislation constitutional, and we find no error therein."

To the same effect, see *Carman* v. *Hickman County*, 215 S. W. (Ky.) 408.

The Supreme Court of Iowa has held that classifications based upon agriculture are natural, and obvious, and not arbitrary, unreasonable and discriminatory. In *Clear Lake Co-Op L. & S. Ass'n* v. *Weir*, 200 Iowa 1293 at 1298, 1299; 206 N. W. 297 at 299, the Supreme Court of Iowa said:

> "Agriculture, of which stock-raising is a part, is a basic industry in this state, as well as in a large part of the nation, north and south. A much larger proportion of the people of this state are engaged in agriculture than in any other industry or business. *There is no industry to be found anywhere in which classifications based thereon are more natural, obvious, and exclusive than in agriculture. It is as distinct in its character as mining, manufacturing, banking, or any other branch or division into which society is economically divided.*" (Italics supplied)

Numerous classifications of agricultural products for tax purposes appear in the laws of Iowa, some dating back as far as 1851. Examples are exemption from taxation of agricultural produce harvested by or for the person as-

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sessed within one year of assessment, all wool shorn from his sheep within said time, swine under nine months of age, all other domestic animals under one year of age, and all farming utensils of any person who makes a living by farming. Other classifications in said laws exempt family equipment, tools of mechanics, books of lawyers, all up to $300 in value, and the team, wagon and harness of teamsters, and capital stock of electric utilities, and manufacturing, and mercantile corporations. See Section 427.1, Code of Iowa, 1946.

Classifications for exemptions or different tax treatment are therefore within the "purposes and policy of taxation" in Iowa. "Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden." *Madden* v. *Kentucky*, 309 U. S. 83 at 87, 88.

These authorities clearly support such tax exemptions. The statute here under consideration may properly be held as Appellees contend as placing a ceiling upon the tax levied upon agricultural land, as defined in the law, and an appropriation to the school district to reimburse it for the revenue lost. The State of Iowa through its legislature long ago placed a ceiling upon such land within cities and towns and made no such appropriation. In no event is Appellant's tax on her land raised. It would be if the ceiling were placed on the agricultural land, as defined by the legislative enactment, and the funds not appropriated to reimburse the school district for the revenue lost.

In so far as the Fourteenth Amendment is concerned, the language of this Court in *Missouri* v. *Dockery*, 191 U. S. 165, 48 L. Ed. 133, 24 S. Ct. 53 is applicable. In the last cited case, in 191 U. S. at 170, 171, this Court said:

> "However this may be, the petitioner admitted at the argument that his own tax was correct, and that he would have had no case under the Fourteenth Amend-

ment if the companies had been exempted altogether. Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 293-295; Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540, 562. But his rights under that amendment turn on the power of the State, no matter by what organ it acts. Virginia *v.* Rives, 100 U. S. 313, 318. Therefore, if the Supreme Court of the State construed the statutes as exempting express companies from this tax and substituting another, as it is argued on behalf of the defendants in error that the statutes do, the petitioner cannot complain here. For the legislature could exempt them, and the question whether it has done so or not is for the state courts to decide in their construction of its acts. Furthermore, if the State could grant a total exemption it could grant a partial exemption, and if it has done so, de facto, through its officers, the petitioner cannot come here on an allegation that the officers acted as they did without the authority of the State. That again is for the state court to decide. The petitioner has no case under the Constitution of the United States, and nothing else is open."

Certainly, the Appellant in the case at bar has not raised any substantial Federal question under Section One of the Fourteenth Amendment to the Constitution of the United States, and this Court should decline jurisdiction to review the opinion and decision of the Supreme Court of Iowa.

IV

Proposition

The classification of agricultural lands at ten acres in size in order that the tax credit may apply is not arbitrary, hostile, capricious, or unreasonable, and does not violate Section 1, of the Fourteenth Amendment to the Constitution of the United States.

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King v. *Mullins*, 171 U. S. 404 at 435, 436, 43 L. Ed. 214 at 226, 18 S. Ct. 925 at 937;
Leicht v. *City of Burlington*, 73 Iowa 29, 34 N. W. 494;
Henderson Bridge Co. v. *City of Henderson*, 173 U. S. 592 at 620, 621, 43 L. Ed. 823 at 833, 19 S. Ct. 553 at 564;
Toyota v. *Hawaii*, 226 U. S. 184 at 191, 192. 57 L. Ed. 180 at 184, 53 S. Ct. 47 at 48;
Booth v. *State of Indiana*, 237 U. S. 391 at 397, 398, 59 L. Ed. 1011 at 1017, 35 S. Ct. 617 at 619, 620;
Northwestern Laundry v. *City of Des Moines*, 239 U. S. 486 at 495, 60 L. Ed. 396 at 402, 36 S. Ct. 206 at 210;
Walls v. *Midland Carbon Co.*, 254 U. S. 300 at 314, 315, 65 L. Ed. 276 at 282, 283, 41 S. Ct. 118 at 121;
Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32 at 41, 72 L. Ed. 770 at 775, 48 S. Ct. 423 at 426;
Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495 at 510, 511, 81 L. Ed. 1245 at 1254, 57 S. Ct. 868 at 873;
Madden v. *Kentucky*, 309 U. S. 83 at 88, 84 L. Ed. 590 at 593, 60 S. Ct. 406 at 408;
Apartment Operator's Ass'n. v. *City of Minneapolis*, 191 Minn. 365 at 370, 254 N.W. 443 at 445;
Baker v. *Town of West Hartford*, 89 Conn. 394, 94 Atl. 283 at 285.

Application of Cited Cases

Appellant complains that the classification of "agricultural lands" at 10 acres or more for the purposes of the legislative enactment constitutes an arbitrary and unreasonable classification and grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers. (See Appellant's Assignment of Errors, p. 2.)

Specifically, Appellant's complaint is that, since she owns 4.13 acres of land devoted exclusively to agricultural purposes, and does not fall within the benefited class, whereas land in tracts of 10 acres or more devoted to the same uses fall within the benefited class, the classification at 10 acres or more renders the legislative enactment in violation of Section One, Fourteenth Amendment to the Federal Constitution as an arbitrary and unreasonable discrimination against her.

That size may be taken into consideration or become the basis of classification is settled beyond doubt by the adjudicated cases, both in this Court, and in Courts of highest jurisdiction of the states of the United States.

Illustrations in state statutes are too numerous to mention more than a few.

In Iowa, it has been the policy of the state to base tax laws as well as others upon size or number. Many statutes apply only to cities of a certain population, and the classification is not objectionable if any city reaching that population comes within the terms of the Act.

Homesteads in Iowa are classified at one-half (½) acre within corporate limits and forty (40) acres without such limits with a limitation of $2500 in value for tax "credits" purposes. In Minnesota, homesteads are classified for partial tax exemption purposes at eighty (80) acres in unplatted lands within corporate limits or without corporate limits, and in cities or towns of less than 5000 population at one-half (½) acre, and in cities of more than 5000 population at one-third (⅓) acre with an assessment of twenty (20%) percent of actual value provided that if the valuation of the homestead is in excess of $4000, the excess is assessed at 33⅓ per cent of actual value.

In Nebraska a homestead is limited to $2000 in value, and may consist of up to 160 acres outside corporate limits and not over 2 lots within corporate limits. In Kansas, the

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homestead may consist of 160 acres of farm land, or 1 acre within corporate limits.

In Iowa, forest reservations of not less than 2 acres, of continuous area, and fruit tree reservations of not less than 1 acre nor more than 10 acres are assessed at $4 per acre. The fruit tree reservation is assessed at this amount for a period of 8 years after planting. See Section 161.2, Code of Iowa, 1946 and Section 441.5, same Code. These statutes date back to 1906. Other states in forest areas have similar laws.

For this Court to enter the field of determining the "size" or "acreage" of tracts of land would constitute an invasion of the power of the legislature to classify property for taxation. This the Court will not do.

In *King* v. *Mullins, supra,* this Court sustained a classification of lands at 1000 acres against the attack that the classification was arbitrary, capricious and unreasonable. This Court in the cited case, 171 U. S. at 435, 436 said:

> "Another point made by the plaintiff in error is, that the provision of the constitution of Virginia exempting tracts of less than one thousand acres from forfeiture is a discrimination against the owners of tracts containing one thousand acres or more, which amounts to a denial to citizens or landowners of the latter class of the equal protection of the laws. We do not concur in this view. The evil intended to be remedied by the constitution and laws of West Virginia was the persistent failure of those who owned or claimed to own large tracts of lands, patented in the last century, or early in the present century, to put them on the land books, so that the extent and boundaries of such tracts could be easily ascertained by the officers charged with the duty of assessing and collecting taxes. Where the tract was a small one, the probability was that it was actually occupied by some one, and its extent or boundary could be readily ascertained for purposes of assessment and taxation. We can well under-

stand why one policy could be properly adopted as to large tracts which the necessities of the public revenue did not require to be prescribed as to small tracts. The judiciary should be very reluctant to interfere with the taxing systems of a State, and should never do so unless that which the State attempts to do is in palpable violation of the constitutional rights of the owners of property. Under this view of our duty, we are unwilling to hold that the provision referred to is repugnant to the clause of the Fourteenth Amendment forbidding a denial of the equal protection of the laws."

This specific classification was sustained by the Supreme Court of Iowa in 73 Iowa 29, 34 N. W. 494. The legislative enactment challenged in the case at bar, in so far as the classification in tracts of 10 acres or more, was modeled after Section 404.4, Code of Iowa, 1946 hereinbefore quoted. This latter statute and classification was attacked on the grounds that this specific classification is purely arbitrary. The Supreme Court of Iowa, 73 Iowa at 30, 31; 34 N. W. at 494, 495, said:

"It is said that, in exempting lots of over 10 acres in size, and not exempting those of less size, of like character and situation, the act in question does not have a uniform operation, and that certain citizens are allowed privileges and immunities which do not belong to all. *But this act was not made to apply to specific property, nor to specific persons. It was made to apply to a certain class of property, and to the owners of such property, whoever they might be.* It is true that privileges and immunities cannot be granted to a class of citizens. But those who happen to be owners of a certain class of property do not themselves become a class in any proper sense. They do not sustain a relation to each other, but a mere property relation. They are affected by the statute in consequence merely of the circumstances in which they happen to be. It was said in Iowa Railroad Land Co. v. Soper, 39 Iowa, 112: 'If the law operates upon every person within the relations and

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circumstances provided for, it is sufficient.' The principle involved appears to us to be not unlike what has been frequently decided. McAunich v. Miss. & M. R'y Co., 20 Iowa 338; U. S. Express Co. v. Ellyson, 28 Id., 370; State v. Shroeder, 51 Id. 197.

It is urged by the plaintiffs, to be sure, *that the distinction which the legislature has attempted to make between lots containing more than 10 acres, and those containing 10 acres or less, is purely arbitrary*, and that for this reason the act cannot be said to have a uniform operation, as it might if the larger lots as provided could be said to constitute a class, as distinguished from the smaller lots." (Italics supplied.)

The Court answered this contention in the following language at 73 Iowa at 31, 32 N. W. at 495 where the Supreme Court of Iowa said:

> *"The legislature seems to have thought that large lots bought within the city, and used for agricultural purposes do constitute a class, as distinguished from small lots, though agricultural products be grown upon them to some extent; and we think that it cannot be denied that the thought is correct. Proceeding manifestly upon this thought, it fixed the limit between what might be considered as belonging to one class and what to the other. This was necessary as a practical guide to the assessor. It is of no use to consider the imperfection of the division. Absolute justice in taxation is unattainable."* (Italics supplied)

The statutes of Connecticut exempt from taxation for a period of 20 years forest reservations of one acre or more planted to trees specified in the statute. This statute was attacked upon the grounds that it "provides a special privilege" to the owner of the tract. The Supreme Court of Connecticut sustained the classification. See *Baker* v. *Town of West Hartford*, 89 Conn. 394; 94 Atl. 283.

The case of *Leicht* v. *Burlington, supra,* has been cited repeatedly by the Courts of highest jurisdiction of the several states.

In *Henderson Bridge Co.* v. *City of Henderson,* 173 U. S. 592 this Court sustained an attack upon the city charter *which exempted tracts of land of ten acres* devoted to farming purposes.

This case is quoted at length on pp. 27, 28 of this Brief and will not be repeated here.

This Court also sustained a licensing statute enacted by the Territorial Legislature of Hawaii which classified the District of Honolulu and other districts of the Islands, for the purpose of a differentiation in the license fee required. The plaintiff appellant claimed discrimination in this respect. This Court in *Toyota* v. *Hawaii,* 226 U. S. at 191, 192 held that the classification was reasonable and within the legislative discretion.

This Court, 226 U. S. at 191, 192, said:

> "The remaining contention, urged in various forms by the assignments of error, comes to the single point that the statute created an arbitrary classification. It cannot be said, however, that there was no reasonable basis for a distinction between Honolulu and other districts. And it was the province of the legislature to decide upon the amount of the fees which should be charged. It must be assumed that in so deciding it took into account varying conditions in the respective localities, as, for example, in the amount of business transacted and in the corresponding value of such licenses. Necessarily, as was said in Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283, 294, the power of classification 'must have a wide range of discretion.' It is not reviewable 'unless palpably arbitrary.' Orient Insurance Co. v. Daggs, 172 U. S. 557, 562; Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36, 52-55; Engel v. O'Malley, 219 U. S. 128; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78; Mutual Loan Co. v. Martell,

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222 U. S. 225, 235. With its intimate knowledge of local conditions, the Supreme Court of the Territory said upon this point: 'The great bulk of the business of the Territory is done in Honolulu. It is not for us to say whether we would make the difference in the amount of license fees in this case as large as the legislature has made it. It is sufficient that we cannot say that the difference is unreasonable or that the statute is unequal or arbitrary in its operation.' ''

In *Booth* v. *State of Indiana, supra,* this Court sustained, against a challenge that the classification was arbitrary and in violation of Section 1, of the 14th Amendment to the Federal Constitution, a law of Indiana which required operators of coal mines to provide a wash house upon request of 20 miners, and if the mine did not employ 20 miners, then upon request of one-third (⅓) of the miners employed.

The Court, in the cited case 237 U. S. at 397, 398, pointed out the reasoning by which the Courts sustain "fixed boundaries" in the field of classifications. At the cited pages this Court said:

> "It is, however, further objected that the law discriminates because it may be applied to one mine and not to another, all other conditions being the same but the desire of the miners—indeed, discriminates upon a distinction more arbitrary that that, upon the desire of twenty in one mine as against a lesser number, nineteen, it may be, in another. The objection is a familiar one and has an instance and answer in McLean v. Arkansas, 211 U. S. 539. It is the usual ground of attack upon a distinction based on degree, and seems to have a special force when the distinction depends upon a difference in numbers.
>
> But there are many practical analogies. The jurisdiction of a court is often made to depend upon amounts apparently arbitrarily fixed. For instance, the jurisdiction of the District Court of the United States (formerly the Circuit Court) is limited to civil suits in law

and equity in certain instances in which the amount in controversy is $3,000. It could be objected, as it is here objected, that the amount is arbitrary and that there cannot be any difference in principle between suits for $3,000 and suits for $2,999, a distinction dependent upon one dollar. Indeed, in more acute illustration, the distinction may be made of one cent only. And so might there be objection to any amount which might be selected, as it might be also to any number of petitioning miners which the legislature of Indiana might have selected. Indeed, would not an objection have the same legal strength if the law had been made to depend upon anything else than unanimity of desire? To require that it might well have been thought by the legislature would render the legislation nugatory, and that a lesser number would call it into exercise and attain its object. The conception, no doubt, was that a lesser number—indeed, the number selected—would be fairly representative of the desire and necessity of the miners and that use would breed a habit, example induce imitation and a healthful practice starting with a limited number might become that of all. And such consummation justified the effort, the manner adopted attaining the end sought as well as if not better than a direct and peremptory requirement of the miners and mine owners."

In *Northwestern Laundry* v. *Des Moines*, 239 U. S. 486 sustained a law which applied to laundries in cities of the State of Iowa. "Now or hereafter having a population of sixty-five thousand (65,000) inhabitants or over." This statute was attacked upon the grounds that the classification was arbitrary and an illegal classification in violation of Section 1, Fourteenth Amendment to the Federal Constitution. This Court sustained the classification and in 239 U. S. at 495 said:

"As to the attack upon the ordinance because of arbitrary classification, this question has been so often discussed that nothing further need be said. The ordi-

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nance applies equally to all coming within its terms, and the fact that other businesses might have been included, does not make such arbitrary classification as annuls the legislation. Nor does it make classification illegal because certain cities are included and others omitted in the statute. *Eckerson* v. *Des Moines*, 137 Iowa, 452."

In *Walls* v. *Midland Carbon Co.*, 254 U. S. 300, 65 L. Ed. 276, 41 S. Ct. 118, this Court sustained a law of the State of Wyoming which designated the location of gas wells as "within ten miles of any incorporated town or industrial plant" for the operation of a classification statute. After citing *Bacon* v. *Walker*, 204 U. S. 311, and with reference to *Bacon* v. *Walker, supra*, in 254 U. S. at 315, this Court said:

> "Pertinent cases were cited, and the exclusion from grazing within two miles of the possessory claim of another was decided to be legal, that 'the selection of some limit is a legislative power,' and that it was 'only against the abuse of the power, if at all, that the courts may interpose.' The mere distance expressed nothing."

To this same point of legislative power to fix a limit or line of demarcation between the taxed and the untaxed, Mr. Justice Holmes in a dissenting opinion in *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. at 41, said:

> "When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the

legislature must be accepted unless we can say that it is very wide of any reasonable mark."

The dissenting opinion of Mr. Justice Brandeis in *Louisville Gas & Electric Co., supra,* becomes important for the reason that it is cited and followed by this Court in *Madden v. Kentucky,* 309 U. S. 83 at p. 88. Mr. Justice Brandeis, in his dissenting opinion in *Louisville Gas & Electric Co., supra,* 277 U. S. at 44, 47, said:

> "In Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 300, 301, the inheritance tax, in the case of strangers to the blood, exempted estates of $500, but did not allow that exemption to larger estates. Moreover, it prescribed progressive rates, rising in steps with the amount of the gift and applying to the entire gift and not merely to the excess. Under the law a legatee of $10,000, being subject to a 3 per cent tax, would receive net $9,700, whereas a legatee of $10,001, being subject to a 4 per cent tax on the entire legacy would receive net only $9,600.96. The Court held the classification reasonable, saying:
>
> 'The condition is not arbitrary because it is determined by that value (of the inheritance); it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' The jurisdiction of courts is fixed by amounts. The right of appeal is. As was said at bar the Congress of the United States has classified the right of suitors to come into the United States courts by amounts. Regarding these alone, there is the same inequality that is urged against classification of the Illinois law. All license laws and all specific taxes have in them elements of inequality, nevertheless they are universally imposed and their legality has never been questioned.'

The Court has likewise sustained a statute which imposed an ad valorem tax upon telephone companies with

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annual earnings of $500 or more, while exempting others similarly situated whose earnings were less than $500, *Citizens Telephone Co.* v. *Fuller*, 229 U. S. 322, 329; a statute which imposed a license fee upon 'all persons' engaged in the laundry business but exempted concerns employing not more than two women, and steam laundries, *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62; an ordinance under which a $5 tax was laid upon merchants whose gross sales were $1,000, and a tax of $10 upon those similarly situated whose sales were $1,001, *Clark* v. *Titusville*, 184 U. S. 329, 331; an ordinance which laid a tax of $1,000 upon theatres whose admission was $1 or more, but only $400 upon those similarly situated whose admission prices were less than $1 and more than 50 cents, *Metropolis Treatre Co.* v. *Chicago*, 228 U. S. 61, 69-70.

In the light of these decisions, I should have supposed the validity of the classification made by the Legislature of Kentucky to be clear. Recognizing that members of the legislature of the State which made the classification, and members of the court which sanctioned it, necessarily possessed greater knowledge of local conditions and needs than is possible for us, I should have assumed that this classification, which obviously is not invidious, was a reasonable one, unless some facts were adduced to show that it was arbitrary. Compare *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 255; *Clarke* v. *Deckebach*, 274 U. S. 392, 397. No such facts have been adduced by the Company. On the other hand, facts called to our attention by counsel for the Commonwealth and of which we may take judicial notice, *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Sligh* v. *Kirkwood*, 237 U. S. 52, 61, show that the classification was adopted by the Legislature of Kentucky in an effort to equalize the tax burden incident to loans."

And again Mr. Justice Brandeis in the last cited case, 277 U. S. at 53, said:

"Wherever the line might be drawn, the statute would sometimes operate unjustly. But such occasional in-

> stances of injustice would not render the classification arbitrary. As was said in *Metropolis Treatre Co.* v. *Chicago*, 228 U. S. 61, 69, 70: 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' "

In *Madden* v. *Kentucky*, 309 U. S. 83, this Court spoke definitely upon the question of classification, and at p. 88 cited the dissenting opinion of Mr. Justice Brandeis in *Louisville Gas & Electric Co.* v. *Coleman, supra.*

Extensive quotation from *Madden* v. *Kentucky, supra*, is made at p. 17, 18 of this Brief and same will not be repeated here. Appellees respectfully ask the Court to refer to the previous quotation.

Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495, construes the unemployment compensation Act of Alabama in which it was charged that the classification of employers who had eight or more employees for the operation of the statute was arbitrary and in violation of Section 1, Fourteenth Amendment to the Constitution of the United States.

Speaking to this question, this Court, in reversing the Trial Court (301 U. S. at 510, 511), said:

> "Distinctions in degree, stated in terms of differences in number, have often been the target of attack, see *Booth* v. *Indiana*, 237 U. S. 391, 397. It is argued here, and it was ruled by the court below, that there can be no reason for a distinction, for purposes of taxation, between those who have only seven employees and those who have eight. Yet, this is the type of distinction which the law is often called upon to make. It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of infancy terminate and the status of legal competency is assumed. It separates large incomes which are taxed from the smaller ones which are exempt, as it marks here the difference between the proprietors of larger businesses who are taxed and the proprietors of smaller businesses who are not.

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"Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others."

It is to be noted that the language of this Court in the above quotation is distinctly similar with respect to when "a point has to be fixed or a line has to be drawn" to the language of Mr. Justice Holmes in his dissenting opinion in Louisville Gas & Electric Co. v. Coleman, supra.

It may have been determined by the legislature of Iowa that the administrative convenience and expense in applying the legislative enactment challenged in the case at bar to many small tracts of land would be greater than the benefits. This would have been sufficient distinction if there were none other. Or it may have been, as was said by the Supreme Court of Iowa in Leicht v. Burlington, supra, fixed at 10 acres as a guide to the assessor or other taxing officials. At any rate, it is as logically placed at 10 acres as at 8 acres, or any other figure. The classification at 10 acres for tax exemption purposes of lands used for agricultural purposes has existed in the law of Iowa for more than 70 years, and was held constitutional by the Supreme Court of Iowa as a reasonable classification more than 60 years ago. See Leicht v. City of Burlington, supra, decided in 1887. Surely, under the rules of construction of the 14th Amendment to the Federal Constitution hereinbefore quoted, this Court cannot say that the classification is in the remotest chance arbitrary, capricious, hostile, or palpably erroneous, and that a substantial Federal question is raised by reason of the 10 acre line of demarcation; especially in view of the long established holdings of this Court. This Court should, therefore, decline jurisdiction in this case.

V

Proposition

The classification of school districts wherein the millage levy is 15 mills for general (operational) school purposes in order that the tax credit may apply is not plainly arbitrary, hostile, capricious, or palpably erroneous; and is therefore not violative of Section 1, of the 14th Amendment to the Constitution of the United States.

AUTHORITIES

See cases and quotations in Division IV of this Brief:

Miller v. *Childers*, 107 Okla. 57, 238 Pac. 204 at 206, 207.
Great Northern R'y Co. v. *Whitfield*, 65 S. D. 173, 272 N. W. 787 at 790, 791.
Apartment Owners Ass'n v. *City of Minneapolis*, 191 Minn. 365, 254 N. W. 443.
Myers v. *Board of Education*, 48 Oh. App. 43, 192 N. E. 393.

Application of Cited Cases

The cases cited and quoted in Division IV, P. 35, relating to the classification at 10 acres for the operation of the legislative enactment apply with equal force to the 15 mill classification. The Legislature of Iowa determined that where millage levies are below 15 mills for general operating expenses, the school taxes were not a burden on agricultural lands. This Court has said that where a line must be drawn the Courts will leave it to the legislative body as to where it may be drawn.

The 15 mill limitation for the purpose of tax limitation or ceiling, or for the purpose of appropriations to aid education are not unusual. The Constitution of Oklahoma provides that school districts are authorized to levy up to

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15 mills for general school purposes. The legislature made an appropriation to aid school districts where such millage did not raise sufficient funds to carry on a school. The Supreme Court of Oklahoma sustained the legislative enactment against an attack that the Act was arbitrary and an unreasonable classification.

The Supreme Court of Oklahoma, 238 Pac. at 206, said:

> "The Constitution has specifically authorized each school district to levy and collect a 15-mill tax levy, to be by it expended in carrying on this work. There the Constitution terminates the expenditure by a school district, and from there, where the school district's work must end, the Legislature must 'carry on' to the point where we can say that there is satisfied the constitutional mandate for the maintenance of a free public school system. The Legislature, with authority so to do, has said an 8 months annual school term is necessary. Affirming its decree, we adopt its judgment as our own. With the maximum levy expended, many school districts will have perhaps only a 3 months term, while others may have a 12 month school if they so desire. Without affirmative aid by the Legislature, the constitutional mandate for an efficient free school system will be unexecuted in those weak school districts."

And further, 238 Pac. at 207, that Court said:

> "The act makes the appropriation available in all school districts in the state where, under the restriction of the Constitution, such districts are unable to maintain the public schools for such length of terms as the Legislature, acting within its constitutional authority, and the exercise of sound legislative discretion, has declared must be provided. *The classification is a reasonable one. The act applies to all then or thereafter coming within the classification, and is not violative of the section of the Constitution to which we have referred.*" (Italics supplied)

In *Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 272 N. W. 787 at 790, 791, the Supreme Court of South Dakota sustained a law of that state which fixed the maximum levy on agricultural lands at 8 mills against an attack that the law constituted an arbitrary classification in violation of Section 1, 14th Amendment to the Constitution of the United States.

Appellees here point out that the statute attacked in the case at bar applies to any and all school districts in the state, either now or in the future, where the millage rate for general tax purposes exceeds 15 mills. Naturally, the millage rates in school districts vary from time to time and the statute applies in any and all school districts wherein the levy exceeds 15 mills in any year.

Assessment statutes may be fitted to the state's tax system either by maximum tax levies in mills on a class of property, or by a percentage of the assessed valuation.

In the laws of Minnesota, property has long been classified on the basis of a percentage of actual value. This scheme of taxation was sustained against an attack that it violated the equal protection clause of the Fourteenth Amendment to the Federal Constitution. In *Apartment Operators' Ass'n* v. *City of Minneapolis*, 254 N. W. at 444, the Supreme Court of Minnesota, citing many opinions of this Court, sustained the law and at the cited page said:

> "In classifying property for the purpose of taxation, the Legislature is determining a matter of state policy and is not tied down to any narrow or technical rule." Dohs v. Holm, 152 Minn. 529, 189 N. W. 418, 420.
>
> Prior to the 1933 enactment here considered, real property was divided into three general classes, viz.: 'Real estate in which iron ore is known to exist' (the iron ore, mined or unmined, assessed at 50 per cent of its true value); 'unplatted real estate' at 33⅓ per cent of its true value, and all other real estate at 40

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per cent of its true value. Mason's Minn. St. 1927, p. 1933. Chapter 359 provides:

'Class 3 b. All unplatted real estate, • • • which is used for the purposes of a homestead, shall constitute class three 'b' (3b) and shall be valued and assessed at twenty (20) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of $4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class three (3) hereof. (Property coming within class 3 is valued and assessed at 33⅓ per cent of its true value.)

'All platted real estate • • • which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at twenty-five (25) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of $4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class four (4) hereof. (Property coming within class 4 is valued and assessed at 40 per cent of its true value.)'

"The classification of platted and unplatted land still remains. That classification is again divided into homestead and nonhomestead lands, the former being assessed at a lesser percentage of true value. The distinction is predicated upon the use made of the property. The other change is based upon value and gives a preference to homesteads of a value of $4,000 or less."

And again at p. 445 the Court said:

"*Placing homesteads in two classes on the basis of valuation was within the scope of the broad power of the Legislature to classify property for the purpose of taxation. Its selection of property for one classification or another is binding upon the courts, 'unless it appears beyond a reasonable doubt that the legislative body acted arbitrarily and without sufficient information.'* McReavy v. Holm, 166 Minn. 22, 206 N. W. 942, 944. The United States Supreme Court, in Citi-

zens' Tel. Co. v. Fuller, 229 U. S. 322, 33 S. Ct. 833, 836, 57 L. Ed. 1206, stated: 'Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. * * * The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' We conclude that the classification here considered does not come within the above quoted limitations." (Italics supplied.)

A classification of school districts at 15 mills was sustained against an attack that it was not uniform in operation in *Myers* v. *Bd. of Education*, 48 Ohio App. 43, 192 N. E. 393. The statute provided that school districts wherein the millage levy for school purposes was 15 mills could participate in the state educational equalization fund by voting on additional school fund tax levy of not to exceed 3 mills. The first qualification for participation in the state fund was that the levy for school purposes must exceed 15 mills in some districts and 9.5 mills in other districts. The Court held that the Act was of uniform operation, and in 192 N. E. at 400, said:

"Under the provisions of section 5625-18a, the period the levy remains in effect is the number of years the school district may continue to participate in the equalization fund, which is a matter of public record and determinable from such record, and the rate of tax is fixed by definite arithmetical processes, determinable from public records, so that the rate of the tax and the period for which it is to run are both definite and certain. *The act is of uniform operation throughout the state, as all school districts similarly situated were entitled to its benefits; and the tax therein provided to be levied was by uniform rule, as it was the same in every school district proceedings pursuant to the act*, and the object of the tax was distinctly stated." (Italics supplied.)

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Although the question of special privileges and immunities and equal protection of the laws clause of Section 1, Fourteenth Amendment to the Federal Constitution was not raised and decided, the question of uniformity of operation was raised and decided, and, if uniform in operation the Act could not be arbitrary, or hostile within the meaning of that amendment.

These cases from state courts are not binding upon this Court and are cited merely to show that a 15 mill limitation, or other millage limitation, are common in school tax law legislation and that the line of demarcation at 15 mills is within legislative discretion with which the Courts will not interfere or hold in violation of Section 1, of the Fourteenth Amendment to the Federal Constitution.

This Court cannot say that a substantial Federal question under the Fourteenth Amendment has been raised by this 15 mill classification, and this Court should decline jurisdiction on this ground.

VI

Proposition

The legislative enactment challenged in the case at bar was enacted for a public purpose, to-wit in aid of agriculture as an industry, and to encourage the reorganization of public school districts; the legislature of the State of Iowa, and the Supreme Court of Iowa have so determined; and this Court will not hold the enactment void unless "the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property".

AUTHORITIES

Dickinson v. *Porter,* (The case at bar), 35 N.W. 2d (Iowa) 66 at 76, 78, 79, 81, Appellant's Statement as to Jurisdiction, Appendix "C", p. 15 to p. 28;

Fallbrook Irrigation Dist. v. *Bradley,* 164 U. S. 112 at 157 to 161; 41 L. Ed. 388, 389; 17 S. Ct. 56 at 62 to 64;

Thomas v. *Gay,* 169 U. S. 264 at 278, 279, 42 L. Ed. 740 at 746, 18 S. Ct. 345;

Strickley v. *Highland Boy Mining Co.,* 200 U. S. 527 at 530, 531, 50 L. Ed. 581 at 583, 26 S. Ct. 301 at 302, 303;

Hairston v. *Danville & Western Ry.,* 208 U. S. 598 at 606, 607, 52 L. Ed. 637 at 641, 642, 28 S. Ct. 331 at 334, 335;

Union Lime Co. v. *C. & N.W. Ry. Co.,* 233 U. S. 211 at 218, 58 L. Ed. 924 at 928, 34 S. Ct. 522 at 524;

Jones v. *City of Portland,* 245 U. S. 217 at 221, 222, 62 L. Ed. 252 at 255;

Green v. *Frazier,* 253 U. S. 233 at 239, 240, 64 L. Ed. 878 at 881, 882, 40 S. Ct. 499 at 501;

Rindge v. *County of Los Angeles,* 262 U. S. 700 at 705, 706, 67 L. Ed. 1186 at 1192, 1193;

Milheim v. *Moffat Tunnel Dist.,* 262 U. S. 710 at 717, 67 L. Ed. 1194 at 1199, 43 S. Ct. 694 at 696;

Louisville Gas & Electric Co. v. *Coleman,* 277 U. S. 32 at 40, 72 L. Ed. 770 at 775, 48 S. Ct. 423 at 426;

Williams v. *Mayor of Baltimore,* 289 U. S. 36 at 41, 42, 77 L. Ed. 1015 at 1021, 1022, 53 S. Ct. 431 at 433;

A. Magnano Co. v. *Hamilton,* 292 U. S. 40 at 43, 44, 78 L. Ed. 1109 at 1113, 1114, 54 S. Ct. 599;

Carmichael v. *Southern Coal & Coke Co.,* 301 U. S. 495 at 514, 515, 81 L. Ed. 1245 at 1256, 57 S. Ct. 868 at 874, 875;

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Sage Stores Co. v. *Kansas*, 323 U. S. 32 at 35, 89 L. Ed. 25 at 28 65 S. Ct. 9 at 10;
Asbury Hospital v. *Cass County*, 326 U. S. 207 at 214, 215, 90 L. Ed. 6 at 13, 14, 66 S. Ct. 61 at 65;
Everson v. *Board of Education*, 330 U. S. 1 at 6, 7, 91 L. Ed. 711 at 718, 719, 67 S. Ct. 504 at 506, 507;
Board of Supervisors v. *Stewart*, 30 Iowa 9 at 22, 29, 1 Am. Rep. 238;
Grout v. *Kendall*, 195 Iowa 467 at 477, 478, 192 N.W. 529 at 533;
Carroll v. *City of Cedar Falls*, 221 Iowa 277 at 282, 292, 261 N.W. 652 at 655, 660;
Ahrweiler v. *Board*, 226 Iowa 229 at 233, 236, 283 N.W. 889 at 891, 892;
Apartment Operators' Assn. v. *City of Minneapolis*, 195 Minn. 365, 254 N.W. at 443, 444, 445;
State v. *Snyder*, 29 Wyo. 199, 212 Pac. 771, 777, 782.

Application of Cases Cited

The Supreme Court of Iowa, in the opinion in the case at bar, 35 N.W. 2d 66 at 76, held that the legislative enactment for the purpose of benefiting agriculture, Iowa's basic industry, and to encourage the reorganization of school districts to improve the state's educational system, both of which are universally held to be for the general welfare and therefore each is for a "public" purpose. These holdings are assigned as error in paragraphs 5, 6, 7, and 8, p. 2, 3, Appellant's Assignment of Errors.

The Supreme Court of Iowa in the case at bar, 35 N.W. 2d at 76; Appellant's Statement as to Jurisdiction, p. 15, 17, said

> "As stated in Watson *v.* State Comptroller, 254 U. S. 122, 124, 125, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175: 'Any classification is permissible which has a reasonable relation to some permitted end of government action.

• • • It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation'. (Citations.)'

The power of state legislature to adjust their tax laws in order to encourage an industry or undertaking deemed vital to the welfare of the state or in furtherance of some related principle of public policy has frequently been upheld.

The governor of the state in commenting upon the report of the school code commission said in his message to the legislature that enacted this law, 'We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities.' *It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being of the state as a whole is directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food and agriculture must supply their needs.*

Our state constitution contains the express mandate, 'The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.' Art. IX. 2d div., sec. 3.

We have frequently referred to agriculture as the basic industry in this state. See for example Blume *v.* Crawford County, 217 Iowa 545, 550, 551, 250 N.W. 733, 92 A.L.R. 757; Clear Lake Co-op. Live Stock Shippers' Ass'n. *v.* Weir, supra, 200 Iowa 1293, 1298, 206 N.W. 297. The Blume case (217 Iowa 545, 250 N.W. 735) upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions and says a statute in aid of agriculture 'is not repugnant to any constitutional provision.' The plain inference from the opinion is that what benefits agriculture benefits the state as a whole. Other decisions generally like the Blume case appear in Annotation, 92 A.L.R. 768, 770.

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Pertinent here is this language from Carman *v.* Hickman County, 185 Ky. 630, 215 S.W. 408, 411:

"• • • *it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importance of every other industry in the state, as well as to the comfort and happiness of the whole people;* • • •".

It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. *We are not convinced the legislature might not fairly conclude this law in its practical operation will both benefit and encourage agriculture.*" (Italics supplied.)

To sustain this holding the Court cited (See 35 N.W. 2d at 77) from the opinions of this Court the following cases:

Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495, 57 S. Ct. 868, 872, 81 L. Ed. 1245, 1253, 1255, 109 A. L. R. 1327, 1333, 1335;

Aero-Mayflower Transit Co. v. *Georgia Pub. Serv. Comm.* 295 U. S. 285, 291, 55 S. Ct. 709, 711, 79 L. Ed. 1439, 1444;

American Sugar Refining Co. v. *Louisiana*, 179 U. S. 89, 95, 21 S. Ct. 43, 46, 45 L. Ed. 102, 105;

A. Magnano Co. v. *Hamilton*, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109;

Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770.

The Court also cited cases from many state jurisdictions. With reference to the furtherance of the reorganization

of school districts to improve the state's educational system, the Court, 35 N.W. 2d at 78, said:

> "Since we have upheld the classification of lands used for agricultural purposes upon the reasons stated in Division III and this Division IV, *it is unnecessary to consider whether, as suggested by the legislative commission that recommended the passage of the act and as argued by defendants, the classification might also be sustained as in furtherance of the reorganization of school districts in order to improve our educational system. We may observe, however, this might well have been one of the considerations that occurred to the legislature in making the classification and we cannot say such conclusion could not be reached in good faith.* The test of reasonableness of a classification is good faith of the legislature in making it." (Italics supplied)

The operation of the Act is simple. Sections 426.6, *et seq.*, Code of Iowa, 1946, p. 2 of Appellant's quotation of the statutes attacked, provide that the county auditor (who makes up the tax lists in Iowa) lists by school districts all the tracts of lands entitled to credit under the Act together with the taxable value, as shown by the assessment rolls returned to him by the assessors of the county. He then determines from this value and the budget of the school district filed with him the millage rate in each school district for general school purposes. If the millage rate is in excess of 15 mills he computes the amount of credit each and all the tracts are entitled to, by multiplying the taxable value thereof by the millage rate in excess of 15 mills. He totals the amounts for all school districts in his county and forwards the total for his county to the state comptroller. The state comptroller then totals the amount of credits for all counties of the state and apportions the funds appropriated and in his hands to the several counties in the state, and forwards state warrants to the county auditors of the several counties of the state. Upon receiving the warrants,

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the county auditor determines the amount of credit to be credited to each tract of agricultural lands and enters that amount on the tax list. He then delivers the tax lists (showing the credit to each tract of agricultural land) and the state comptroller's warrant representing the total credits to the agricultural land in his county to the county treasurer who credits each school district with the total amount of the tax credits credited on lands in the district, and enters the amount credited to each tract of land in the county upon the tax receipt for the land.

The Court, 35 N.W. 2nd at 81 pointed out that this procedure is modeled after the Homestead Tax Credit Act, Chapter 425, Code of Iowa, 1946 enacted in 1937. The Court said:

> "The law in question seems directly analogous to the Homestead Tax Credit Act, Ch. 425, Code, 1946. *It is plainly patterned after the homestead law. The public policy served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other,* as stated in Ahrweiler *v.* Board, 226 Iowa, 229, 233, 236, 283, N.W. 889, *is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.*" (Italics supplied)

In the case of Ahrweiler *v.* Board, 226 Iowa 229, 233, 236; 283 N.W. 889, 891, 892, the Supreme Court of Iowa said:

> "Thus it appears that the legislature, realizing the social and material benefits to the public at large from the ownership of homesteads by the people, sought to encourage and increase such ownership and occupation. The method adopted was to grant to each homestead a credit against the real estate taxes for each year the property constituted a homestead."

The Court in the cited case, 283 N.W. at 892 said:

> "*The tax credit is not a credit to the owner, but to the homestead, although this results in benefit to the owner and cash refunds were allowed taxpayers who had paid such taxes prior to the allowance of the credit.* That the credit is to the property, as distinguished from the owner, is evident from various provisions of the act. *The credit (or refund) is given against the tax on the homestead and the taxpayer makes claim therefor as owner of the homestead.*
>
> "The Homestead Exemption Law was not adopted upon the premise that a homestead credit was a gift or bonus with no consideration requirements in return. *The principle behind the act was benefit to be returned to the state and its people by homestead ownership.* As consideration for exemption it might be said that the homestead earns its credit each year of its existence. Consequently, it should not be entitled to credit for any other year. The credit against the 1936 tax may be explained and justified upon the theory that it was morally due for service already rendered." (Italics supplied)

The Court in the case at bar, 35 N.W. 2d 81, also said:

> "Again, from 1 Cooley, 4th Ed., section 175, page 384: 'In case of doubt, courts are largely influenced by the public policy of the state, in determining whether taxation is for a public purpose.' See also 61 C.J., Taxation, section 20.
>
> *As previously indicated, there can be no question it is part of the public policy of this state to encourage agriculture. And the furtherance of the reorganization of school districts in order to improve our educational system would be as plainly part of our public policy. As hereinafter pointed out, it has been the policy of the legislature from its inception to grant numerous tax exemptions.*" (Italics supplied)

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The Supreme Court of Iowa, in the state's early history (1870) sustained a tax levied to aid in the construction of railroads as a tax for a public purpose. See 30 Iowa 9, I Am. Rep. 238. That Court also sustained an appropriation through a bond issue for the payment of a bonus to soldiers, sailors and marines for service in World War I as being for a public purpose. In *Grout* v. *Kendall*, 195 Iowa 467, 477, 478; 192 N.W. 529 at 533, that Court said:

> "Whether a particular purpose is a public purpose, and whether it has the sanction of a moral obligation of the state, are questions which have never been definitely answered or defined. It has been quite uniformly held by the courts that the determination of such questions inheres largely in the legislative power. *Within the zone of doubt that is a moral obligation of the state, and that is a public purpose, which the Legislature deems to be such.*"

The Supreme Court of Iowa, in the case at bar, construed the legislative enactment to place a ceiling of 15 mills upon agricultural lands in tracts of 10 acres or more, and by appropriation from funds in the state treasury reimburses the districts wherein the ceiling applies. In the opinion, 35 N.W. 2d at 79, Appellant's Statement as to Jurisdiction, Appendix "C," p. 22, the Iowa Court said:

> "In reality, however, the law separately classifies only lands used for agricultural purposes and those not so used and then subclassifies agricultural lands into tracts containing ten acres or more and those not that large (section 424.2) for the purpose of applying a different tax burden to the lands thus classified in order to apportion the taxes to the actual benefits received, to encourage agriculture and, the legislature may also have felt, to further the reorganization school districts so as to improve our educational system.
>
> A ceiling of 15 mills for school taxes is placed upon agricultural tracts of ten acres or more and the state,

to the amount of $500,000, reimburses the districts in which the ceiling is applied. The South Dakota law, upheld in Great Northern R. Co. *v.* Whitfield, *supra*, 65 S.D. 173, 272 N.W. 787, 111 A.L.R. 1475, fixes eight mills as the ceiling for school taxes on agricultural lands."

The 52nd session of the Iowa General Assembly created a Military Service Tax Credit Fund, (Ch. 231, Laws of 52nd G.A.). For more than fifty years, the State of Iowa has granted exemption in a limited amount to persons for military service in the various wars engaged in by the United States and that exemption has now been extended to persons for military service in so-called World War II. The legislative enactment last above referred to made an appropriation to reimburse local taxing bodies for the revenue lost on an analogous basis to the agricultural land credit act challenged in the case at bar.

The Court in the case at bar, 35 N.W. 2d at 79, 80, Appellant's Appendix, p. 23, 24, with reference to the appropriation feature of the challenged enactment, said:

"Since, as we have held, this act is a valid taxing measure is not rendered invalid by the appropriation provision. The public policy in furtherance of which the classification is made for the purpose of applying a different tax burden or a partial tax exemption, if the law be considered a partial tax exemption measure, is sufficient to support the appropriation. An act cannot be said to be for a private purpose where 'some principle of public policy' underlies its passage. Whether an appropriation connected with a taxing statute is for a public purpose depends upon whether the remainder of the statute is for such purpose. See 1 Cooley, 4th Ed., section 177.

Without the appropriation made by the act the loss of revenue to the school districts by the imposition of the ceiling of 15 mills would fall upon other property

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owners in the districts. Under the law as written, however, such loss is borne by the state up to the amount appropriated. The money is taken from one public fund and put into another.

That the appropriation feature of the act does not render it invalid in the respect claimed see State *ex rel.* Board *v.* Snyder, 29 Wyo. 199, 212 P. 771, 777, 782, which sustains a law that exempts from taxation property to the amount of $2000 of certain war veterans and provides for reimbursement by a state appropriation to each county in the amount of county tax on the exempted property. The court holds it a valid tax exemption statute because the legislature might have found it served a public purpose as an incitement to patriotism and encouragement to defend the country in future conflicts and the validity of the law is not affected by the appropriation measure. This from the opinion is pertinent here:

'A lawful exemption from taxation cannot, we think, be regarded as a gift or donation to or in aid of the individual • • • in whose favor the exemption is declared. • • • Indeed, we do not think the statute makes a gift to the exemption claimant even indirectly. The state may be regarded as the sole actor. It exempts the property declared to be exempt, and stands the loss not only of the state tax which would otherwise be collected, but the county tax as well. The money appropriated is public money, whether in the state or county treasury, and by the statute is taken out of one public pocket or fund and put into another.' " (Italics supplied)

For more than 50 years, this Court has held that where the legislatures and the courts of a state has construed a legislative enactment to be a part of the public policy of the state and to be enacted for a public purpose, this Court will treat such determination "with very great respect and • • • regard the decisions as embodying the delib-

erate judgment and matured thought of the courts of that state on this question." See *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. at 160, 161 where this Court said that the rule applies to "the exercise of the right of eminent domain or by that of taxation."

In *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. at 530, this Court, speaking to the same subject of "public purpose," said:

> "In view of the decision of the state court we assume that the condemnation was authorized by the state laws, subject only to the question whether those laws as construed are consistent with the Fourteenth Amendment. Some objections to this view were mentioned, but they are not open. If the statutes are constitutional as construed, we follow the construction of the state court."

In *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598 at 606, 607, speaking to the same subject, said:

> "The rule of state decision is clearly established and we have no occasion here to consider the varying reasons which have influenced its adoption. But when we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden we find no agreement, either in reasoning or conclusion. The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question. The determination of this question by the courts has been influenced in the different States by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the States and Territories of the Union that different results might well be expected. * * * The propriety of keeping in view by this court, while enforcing the Fourteenth Amendment, the diversity of local con-

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ditions and of regarding with great respect the judgments of the state courts upon what should be deemed public uses in that State, is expressed, justified, and acted upon in Fallbrook Irrigation District *v.* Bradley, ub. sup., Clark *v. Wells,* ub. sup. and Strickley *v.* Highland Boy Mining Co., ub. sup. What was said in these cases need not be repeated here. *No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the state court as a taking for public uses in conformity with its laws.*" (Italics supplied.)

In *Jones* v. *City of Portland,* 245 U. S. 217, this Court applied this rule to municipal taxation to establish and maintain a municipal wood, coal and fuel yard in the City of Portland, Maine. This Court, 245 U. S. at 221, said:

> "The act in question has the sanction of the legislative branch of the state government, the body primarily invested with authority to determine what laws are required in the public interest. That the purpose is a public one has been determined upon full consideration by the Supreme Judicial Court of the State upon the authority of a previous decision of that Court. Laughlin *v.* City of Portland, 111 Maine, 486.
>
> The attitude of this court towards state legislation purporting to be passed in the public interest, and so declared to be by the decision of the court of last resort of the State passing the act, has often been declared. While the ultimate authority to determine the validity of legislation under the Fourteenth Amendment is rested in this court, local conditions are of such varying character that what is or is not a public use in a particular State is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. In that view the judgment of the highest court of the State upon what should be deemed a public use in a particular State is entitled to the highest respect."

With reference to the application of the rule on public purpose to the taxing power, this Court, in *Green* v. *Frazier*, 253 U. S. at 239, 240, said:

> "The taxing power of the States is primarily vested in their legislatures, deriving their authority from the people. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.
>
> In the present instance under the authority of the constitution and laws prevailing in North Dakota the people, the legislature, and the highest court of the State have declared the purpose for which these several acts were passed to be of a public nature, and within the taxing authority of the State. With this united action of people, legislature and court, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated. What is a public purpose has given rise to no little judicial consideration. Courts, as a rule, have attempted no judicial definition of a 'public', as distinguished from a 'private' purpose, but have left each case to be determined by its own peculiar circumstances. Gray, Limitations of Taxing Power, sec. 176, 'Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general well-being of society, and advance the present and prospective happiness and prosperity of the people.' Cooley, Justice, in People *v.* Salem, 20 Michigan, 452. Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exer-

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cise of discretion which under our system is reposed in the people or other departments of government."

Williams v. *Mayor etc. of Baltimore*, 289 U. S. 36, construed a statute of the State of Maryland exempting a single railroad which was insolvent. The Circuit Court of Appeals held the statute in violation of the Fourteenth Amendment to the Federal Constitution on the grounds that it granted special privilege to a single railroad. This Court reversed the Circuit Court of Appeals and in the opinion, 289 U. S. at 42, said:

> "It is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived. *Otis v. Parker*, 187 U. S. 606, 609; *Missouri Kansas & Texas Ry. Co. v. May*, 194 U. S. 267; *Sproles v. Binford*, 286 U. S. 374, 388, 389. The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way. *Otis v. Parker, supra.* Nor in marking out that field will a court be forgetful of presumptions that help to fix the boundaries. 'As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.'" (Italics supplied.)

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, this Court construed the Alabama Unemployment Compensation Act as levying a tax for a public purpose. In the opinion, 301 U. S. at 514, 515, the Court said:

> "The states, by their constitutions and laws, may set their own limits upon their spending power, see *Loan Association* v. *Topeka*, 20 Wall. 655; cf. *Parkersburg v. Brown*, 106 U. S. 487; *Cole v. La Grange*, 113 U. S. 1, but the requirements of due process leave free scope for the exercise of a wide legislative discretion in determining what expenditures will serve the public interest.

> This Court has long and consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare. *Fallbrook Irrigation Dist. v. Bradley, supra,* 161; *Green v. Frazier, supra,* 240, 241. The existence of local conditions, which, because of their nature and extent, are of concern to the public as a whole, the modes of advancing the public interest by correcting them or avoiding their consequences, are peculiarly within the knowledge of the legislature, and to it, and not to the courts, is committed the duty and responsibility of making choice of the possible methods. See *Fallbrook Irrigation Dist. v. Bradley, supra,* 160; *Jones v. Portland, supra,* 221, 224, 225; *Green v. Frazier, supra,* 239, 240. As with expenditures for the general welfare of the United States, *United States v. Butler,* 297 U. S. 1, 67; *Helvering v. Davis,* post, p. 619, whether the present expenditure services a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court." (Italics supplied.)

Certainly, it is clear at first glance that legislative enactments to aid and encourage agriculture, and to promote the reorganization of school districts are a part of the public policy of the State of Iowa. As pointed out by the Supreme Court of Iowa, 35 N. W. 2d at 76, the Constitution of Iowa contains the express mandate that "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. Art. IX, 2d div., sec. 3." There is, in fact, a compact with the Government of the United States to do that very thing.

Can this Court say that a law enacted for the very purposes of that mandate from the people of Iowa and that compact with the Federal Government was not enacted for a public purpose as a part of the public policy of the State of Iowa in the face of the determination of the legislature and

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every Court of Iowa, including the Court of highest resort that the statute was enacted as a part of the public policy of the State of Iowa "to encourage agriculture" and "the furtherance of the reorganization of school districts in order to improve our educational system"? See 35 N. W. 2d at p. 81.

Certainly, at "first blush" it is apparent that the legislative enactment challenged in the case at bar is a valid exercise of legislative power, and no substantial Federal question is raised under Section 1, Fourteenth Amendment to the Federal Constitution.

In *Sage Stores Co.* v. *Kansas*, 323 U. S. 32, this Court sustained a statute of the State of Kansas prohibiting the sale of "filled milk". In the opinion, 323 U. S. at 34, 35, this Court said:

> "Apparently the objection under the equal protection clause is that the Kansas statute permits the sale of skimmed milk which has less calories and fewer vitamins than petitioners' compound and yet forbids the sale of the compound despite its higher nutritive value. Such an objection is governed by the same standards of legislation as objections under the due process clause. It is a matter of classification and the power of the legislature to classify is as broad as its power to prohibit. A violation of the Fourteenth Amendment in either case would depend upon whether there is any rational basis for the action of the legislature."

In *Asbury Hospital* v. *Cass County*, 326 U. S. 207 this Court sustained a law of North Dakota which excepted from compulsory sale lands acquired, lands owned by corporations whose business was dealing in farm lands and lands belonging to certain cooperative corporations. In sustaining the classifications, this Court, 326 U. S. at 214, 215, said:

> "The North Dakota Legislature may have thought that its policy with reference to corporate-owned agri-

cultural lands would be advanced by permitting corporations engaged in the business of dealing in farm lands to acquire and sell without restriction lands forced upon the market by the statute. It could have thought that its policy would be in part defeated by withholding authority from farm cooperatives to acquire and use farm lands for agricultural purposes. Cf. *United States v. Rock Royal Co-op.*, 307 U. S. 533, 562-564. *Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose,* and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 509, and cases cited." (Italics supplied.)

In *Everson* v. *Board of Education*, 330 U. S. 1, this Court sustained a law of New Jersey which provided for paying costs of transporting pupils to school, including those who attend parochial or church schools, and to reimburse parents for transportation costs paid. This law was attacked on the grounds that it appropriated tax funds to private purposes in violation of the Fourteenth Amendment to the Federal Constitution.

In the opinion, 330 U. S. 1 at 6, 7, this Court said:

"The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax-raised funds were to be expended was not a public one. *Loan Association v. Topeka*, 20 Wall. 655; *Parkersburg v. Brown*, 106 U. S. 487; *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. *Green v. Frazier*, 253 U. S. 233, 240. Otherwise, a state's

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power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general well-being of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. *Davidson v. New Orleans*, 96 U. S. 97, 103-104; *Barbier v. Connolly*, 113 U. S. 27, 31-32; *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 157-158.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran v. Louisiana State Board of Education*, 281 U. S. 370; *Holmes, J., in Interstate Ry. v. Massachusetts*, 207 U. S. 79, 87. See opinion of *Cooley, J., in Stuart v. School District No. 1 of Kalamazoo*, 30 Mich. 69 (1874). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools rather than run the risk of traffic and other hazards incident to walking or 'hitchhiking.' See *Barbier v. Connolly, supra*, at 31. See also cases collected 63 A. L. R. 413; 118 A. L. R. 806. *Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program.* See *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 518. *Subsidies and loans to individuals such as farmers and home-owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.*" (Italics supplied)

It is perfectly clear, at first blush, that the classifications in the legislative enactment attacked in the case at bar are in no way in violation of the Fourteenth Amendment; that the act was enacted in aid of agriculture (since it applies to all agricultural and horticultural land in the state except

tracts of less than 10 acres); that the classification at 10 acres is within legislative discretion; that the act was enacted for a "public purpose" as a part of the "public policy of the state" to encourage reorganization of school districts; that it has been so construed by the Court of highest jurisdiction in the State of Iowa as well as by the lower Court; that under the decisions of this Court these determinations are entitled to great respect by reason of local conditions, and the public policy of the State; that there is no substantial Federal question raised under Section 1, 14th Amendment to the Federal Constitution; and that this Court should decline jurisdiction in this case.

WHEREFORE, Appellees pray that an order be entered by this Court sustaining their Resistance to the Jurisdiction in this cause, and for their costs.

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F. H. BECKER,
County Attorney of Dubuque County,
Dubuque, Iowa,
Counsel for Appellees.

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APPELLEES' MOTION TO DISMISS OR AFFIRM

Come now all of the Appellees, by Robert L. Larson, Attorney General of Iowa, Don Hise, First Assistant Attorney General of Iowa, Earl F. Wisdom, Special Assistant Attorney General of Iowa, Bert F. Wisdom, and F. H. Becker, County Attorney of Dubuque County, Iowa, their counsel, and respectfully move this Court to dismiss the appeal taken herein by Laura Dickinson, or affirm the decision and judgment of the Supreme Court of Iowa rendered and filed herein and as grounds therefor states:

(1) That the appeal is taken for the purpose of delay only;

(2) That the cause shows upon its face that no substantial Federal question is presented for review under Section One, Fourteenth Amendment to the Federal Constitution;

(3) That, although the record in said cause may show that this Court has technical jurisdiction, it is manifest that the questions upon which the appeal is taken and the errors cited by said Appellant are so unsubstantial that further argument is unnecessary.

Authorities in Support of Motion

Rule 7, U. S. Supreme Court Rules;
Rule 12, Par. 3, U. S. Supreme Court Rules;
Missouri Pacific Ry. Co. v. *Castle,* 224 U. S. 541 at 544, 56 L. Ed. 875 at 878, 32 Sup. Ct. 606 at 608;
Chicago R. I. & P. Ry. Co. v. *Devine,* 239 U. S. 52 at 54, 60 L. Ed. 140 at 142, 36 Sup. Ct. 27 at 28;
Boston v. *Jackson,* 260 U. S. 309 at 314, 67 L. Ed. 274 at 282, 43 Sup. Ct. 129 at 131;

Hoages v. *Snyder*, 261 U. S. 600 at 601, 67 L. Ed. 819 at 821, 43 Sup. Ct. 435 at 436.

In *Missouri Pacific Ry. Co.* v. *Castle*, 224 U. S. 541, at 544, this Court said:

> "Defendant in error moves to affirm the judgment under subdivision 5 of Rule 6. The motion we think should prevail, since the questions urged upon our attention as a basis for a reversal of the judgment have been so plainly foreclosed by decisions of this court as to make further argument unnecessary."

This is the universal rule in this Court.

In further support of the Motion, see Authorities cited under Proposition II to Proposition VI, inclusive, of Appellees' "Brief in Suport of Resistance to Appellant's Statement of Jurisdiction."

The cases cited and quoted in Proposition II to Proposition VI, inclusive, of Appellees' "Resistance to Appellant's Statement of Jurisdiction" show conclusively that the classifications made by the legislative enactment challenged herein are reasonable and proper and within public policy of the State of Iowa throughout its history. Said citations from the opinions of this Court show conclusively that the errors upon which Appellant bases her claim for reversal have been so plainly foreclosed by the decisions of this Court as to make further argument unnecessary.

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WHEREFORE, Appellees pray that the appeal herein be dismissed; or in the alternative, that the decision and judgment of the Supreme Court of Iowa be affirmed.

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Des Moines, Iowa;

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F. H. BECKER,
County Attorney of Dubuque County,
Dubuque, Iowa,
Counsel for Appellees.

OCTOBER 17, 1949.

Per Curiam Decisions.

No. 174. DICKINSON *v.* PORTER, STATE COMPTROLLER, ET AL. Appeal from the Supreme Court of Iowa. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. *Martin M. Cooney* for appellant. *Robert L. Larson*, Attorney General of Iowa, *Don Hise*, First Assistant Attorney General, *Earl F. Wisdom* and *Bert F. Wisdom* for appellees. Reported below: 240 Iowa 393, 35 N. W. 2d 66.